United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

OCTOBER TERM, 1905.

No. 1609.

No. 21, SPECIAL CALENDAR.

EMORY A. BRYANT, APPELLANT,

vs.

THE DISTRICT OF COLUMBIA DENTAL SOCIETY.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

INDEX.

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In the Court of Appeals of the District of Columbia.

EMORY A. BRYANT, Appellant,
vs.
THE DISTRICT OF COLUMBIA DENTAL SOCIETY. } No. 1609.

a Supreme Court of the District of Columbia.

EMORY A. BRYANT
vs.
THE DISTRICT OF COLUMBIA DENTAL SOciety. } At Law. No. 46975.

UNITED STATES OF AMERICA, *District of Columbia,* } *ss:*

Be it remembered, that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:—

1 *Petition for Writ of Mandamus.*

Filed May 31, 1904.

In the Supreme Court of the District of Columbia.

EMORY A. BRYANT
vs.
THE DISTRICT OF COLUMBIA DENTAL SOciety. } At Law. No. 46975.

To the supreme court of the District of Columbia, holding a circuit court.

The petition of Emory A. Bryant, respectfully represents.

1. That he is a citizen of the United States and a resident of the District of Columbia.

2. The defendant is a corporation duly organized under the general incorporation law in force in said District.

3. Petitioner is and has been for many years a dentist by profession, and engaged in practice in said District, and being eligible as

a member of the defendant corporation was duly elected as one of its members several years ago, and has since the date of such election conducted himself in all respects with propriety as such member.

4. Said corporation is the owner of a valuable library, of which, as such member, petitioner had the use, and his connection with said society was necessarily an element in the estimation of the public in determining his standing in his profession, and his said mem-
2 bership became and was a valuable franchise of which he could not be deprived without pecuniary loss and serious injury to his professional standing in the community, involving a loss of patients and diminution of income.

5. Some time prior to the month of April, 1904, petitioner was a member of the National Dental Association, which was and is composed of dentists who are members of dental associations located in the various States of the United States, and there was prior to said month legislation pending in the Congress of the United States in which the members of said National Dental Association were interested, said legislation having for its object the appointment of dentists for the United States Navy. Petitioner, in common with other members of his profession, was interested in said legislation, and took active part in securing the same, and in bringing about such frame of the proposed statute as would best subserve the object in view, and to that end he corresponded with various persons, including the president of said National Dental Association, and there was also legislation pending affecting the practice of dentistry in said District.

6. Certain members of the defendant corporation whose views as to said legislation appeared to be opposed to those of petitioner, and who apparently entertain the idea that he had no right as a citizen of the United States to take any part in promoting such legislation, at a meeting of the defendant corporation held on March 15, 1904, through one Doctor Williams Donnally, who, as petitioner is advised and avers was not a legal member of said society, presented allega-
tions against petitioner, and Doctor John H. London also pre-
3 sented charges, which were read to the members of said society then present, and forty-two in number.

7. Section *one* of article *three* of the by-laws of said defendant corporation provides, in part, as follows:

"Any act of special immorality or unprofessional conduct alleged to have been committed by a member shall be referred to a special committee of three, who shall examine into the case and report at the next regular meeting."

Petitioner avers, as he is advised, that no act of immorality was embraced in said allegations or charges, and the only conduct on his part thereby called in question related to his action in respect of said proposed legislation. Nevertheless, the president of said society who is authorized under section 2 of article 4 of the constitution of the said defendant to "appoint all committees not otherwise provided for" appointed a committee of three to investigate said charges.

Subsequently, said committee, from time to time, and prior to April 19, 1904, forwarded to petitioner what purported to be copies of various letters claimed by it to have been received from different individuals non-residents of said District, and of a letter addressed by petitioner as a member of said National Dental Association to the president thereof in respect to matters concerning and growing out of said legislation. No sworn testimony of any kind was taken by said committee, nor had petitioner any opportunity to be confronted with or cross-examine any of the individuals whose testimony in the form of such letters was taken concerning said charges.

8. The next regular meeting of said society was held April
4 19, 1904, and on roll call fifty-nine of the members of said defendant, according to the minutes of said meeting, were in attendance. Thereupon the committee of three appointed as aforesaid to investigate said charges against petitioner, made the following written report:

"We, your committee appointed to investigate the charges and allegations preferred against Doctor Emory A. Bryant, an active member of this society, beg leave to report that we have carefully considered the charges and allegations, and the answers thereto, and, after due consideration, submit the following as our finding, to wit: In regard to the charges preferred by Drs. London, Appler, Findley and Donnally, charges 1, 2, and 3 are sustained, charge 4, is not sustained. In regard to the allegations signed by Drs. Findley, Donnally, Rust and Schooley, we find the allegations marked A. B. C. and D are all sustained.

Respectfully submitted,

D. E. WIBER,
ROB'T A. BATES,
GEO. M. SHARP, *Committee.*"

The charges referred to in said report were not read as a part thereof, or for the information of said society although there were at least twelve members then present who were not present at the meeting on March 15 when said charges were presented, and said twelve members had no opportunity to hear said charges, or know what they were.

Thereupon, Doctor J. Roland Walton, a member of the defendant corporation, moved that the evidence taken by said committee should be submitted to the society. This motion was duly seconded
by Dr. E. S. Smith, but upon being put to vote was lost.
5 Thereupon, a motion was made by Dr. M. F. Findley, seconded by Dr. D. N. Rust that petitioner be expelled from the defendant society, both the mover and seconder of said resolution being two of the parties who had preferred charges against petitioner. Thereafter, petitioner asked for an opportunity to make his defense to the society before a vote was taken on said motion. He was then granted the privilege of the floor for thirty minutes, and, supposing that such privilege was allowed in good faith, and for the purpose-

of enabling him to avail himself of the privilege accorded by said section 1 of article 3 of the by-laws, which provides, following the quotation at the beginning of the seventh paragraph of this petition, as follows:

"Whereupon, if the charge has been sustained, the offending member may, by a vote of two-thirds, be reprimanded or expelled, provided the accused shall have an opportunity for defense before final action is taken of his case."

Your petitioner undertook to make his defense to the members who under said by-law were his judges, and who were alone empowered to expel him. Petitioner soon discovered that it was not the intention of a majority of the members present to allow him to go into the merits of the case, or in anywise make a defense, for whenever he made any reference whatever to the facts, or attempted any explanation, or referred in any way to the evidence, he was interrupted, and the result was that he was not allowed to make any defense and the members of said society proceeded to vote on the question of his expulsion without hearing the charges read, without hearing the evidence in support of them, and without allowing
6 petitioner any opportunity for his defense before final action.

The result was that thirty-nine votes were cast in favor of his expulsion and fifteen votes in opposition thereto. Of the thirty-nine votes so cast in the affirmative two were those of Doctor Williams Donnally and Doctor Henry M. Schooley, neither of whom were legal members of said society, as petitioner believes and avers.

9. Thereafter, letters were addressed by the recording secretary of the defendant corporation signed also by its president, and bearing the imprint of its corporate seal, to the National Dental Association, the president of the Maryland and State Dental Association stating that petitioner had been expelled from the defendant, and this with a view, as he avers, of depriving him of membership in said first mentioned society, thereby to bring him into public disgrace, to his great and manifest injury.

10. Petitioner avers that he was not guilty of the charges preferred; they were not, as he is advised, within the perview of said section 1 of article 3 of said by-laws, referring, as they did, to transactions concerning said proposed legislation, and to remarks made in debate of which no notice was taken under parli-mentary rules, and which constituted no ground for charges or expulsion.

11. Petitioner further avers that he did not have a fair trial or hearing, or indeed any trial or hearing from those in whom resided the power of expulsion. That the whole proceeding against him showed a spirit of prejudice on the part of the majority, who went so far as to have an attorney, not a member of said society, present, as an adviser, and by their refusal to hear him in his defense manifested an intention of expelling him in any event, and this
7 too when at least twelve of his judges had never heard the charges against him read, and did not know what his supposed offense was.

12. Petitioner avers, as he is advised, that the true construction of said section 1 of article 3 of the by-laws requires the committee therein referred to to report to said society the charges and testimony in support thereof, together with that in defense, and thereupon, after consideration of the same and an opportunity then given to the accused to make before the society his defense, a vote is to be taken. But, in petitioner's case, this was not done, as already shown, and the chairman of said committee. when petitioner undertook to make his defense in the society, objected to his so doing, saying, in effect, that for the society to permit petitioner so to do would be a reflection on said committee.

13. Petitioner avers that said expulsion was illegal, without cause or provocation, and in violation of said by-laws, and has had the effect to deprive him of his rights as a member of said society, his interest in the property thereof, which is worth about $1500, and publication of the fact of his expulsion having been made in the daily newspapers, he has been thereby brought into public disgrace, his standing in his, profession has been affected, and his revenues therefrom been diminished.

Prayers.

Wherefore petitioner prays as follows:

1. That a rule may be issued requiring the defendant herein named to show cause, if any it has, within such time as the
8 court may see proper, why a writ of peremptory mandamus should not be granted requiring said defendant corporation to restore petitioner to his membership therein.

2. That in the event the pleadings herein shall result in issue joined, such proceedings may be had that said issue may be tried by a jury, and, in the event of a judgment for petitioner, that he may recover damages and costs, as provided by the Code of said District.

3. That upon final determination, either by a verdict of the jury or the judgment of the court, a peremptory writ of mandamus may be issued to the said defendant corporation requiring it, without delay, so to restore petitioner to membership therein.

EMORY A. BRYANT.

IRVING WILLIAMSON,
Att'y for Petitioner.

DISTRICT OF COLUMBIA, *ss:*

I do solemnly swear that I have read the foregoing petition by me subscribed, and know the contents thereof; that the facts therein stated of my own knowledge are true, and those therein stated upon information and belief I believe to be true.

EMORY A. BRYANT.

Subscribed and sworn to before me this 31st day of May, 1904.
[SEAL.] J. ARTHUR LYNHAM,
Notary Public.

9 *Rule to Show Cause.*

Issued June 30, 1904.

In the Supreme Court of the District of Columbia.

EMORY A. BRYANT
vs.
THE DISTRICT OF COLUMBIA DENTAL SOCIETY. } At Law, No. 46975.

Upon consideration of the petition of Emory A. Bryant, it is this 1st. day of June, 1904, ordered by the court that a rule issue requiring The District of Columbia Dental Society, the defendant in said petition named, to show cause on or before the 17" day of June, 1904, why a writ of mandamus should not issue as prayed in said petition, provided a copy of said rule be served upon said defendant on or before the 10th day of June, 1904.

HARRY M. CLABAUGH,
Chief Justice.

Marshal's Return.

Served copy of within rule on defendant by service on W. D. Munroe, president, June 2, 1904.

AULICK PALMER, *Marshal.*

10 *Answer to Petition for Mandamus.*

Filed June 17, 1904.

In the Supreme Court of the District of Columbia.

EMORY A. BRYANT
vs.
THE DISTRICT OF COLUMBIA DENTAL SOCIETY. } At Law. No. 46975.

The defendant herein, The District of Columbia Dental Society, a corporation organized under the laws of the District of Columbia for answer to the petition of Emory A. Bryant herein filed, answering says:—

(1.) It admits the allegations of paragraph 1.

(2.) It admits the allegations of paragraph 2 that it is a corporation

duly organized under the laws of the District of Columbia, and attaches hereto, marked "Exhibit 1" a copy of its original charter of incorporation, which it prays may be read as a part hereof.

(3.) It admits the allegations of paragraph 3, except as to the allegations made by the petitioner that he "has conducted himself in all respects with propriety as a member" (of the defendant society), which it denies.

(4.) Answering paragraph 4 the defendant says that its only property consists of a small library of books and treatises on the science and art of dentistry, most of which are out of date, and have no intrinsic value.

Further answering paragraph 4, the defendant admits that the connection of the petitioner with the defendant, as one of its members, was an element in the estimation of the public in determining his standing in the dental profession, and that the petitioner
11 could not be deprived thereof without serious injury to his professional standing, both in the District of Columbia, and throughout the country.

(5.) Answering paragraph 5 the defendant admits that prior to the month of April, 1904, the petitioner was a member of the National Dental Association, composed of dentists who were members of the dental association of the various States of the United States, and that there was, prior to the month of April, 1904, legislation pending in the Congress of the United States, having for its object the appointment of dentists for the United States Navy. It admits that petitioner in common with, other members of the dental profession, was interested in said legislation, but denies that he did anything in forwarding said legislation, which was in accord with the best interests of the dental profession, but asserts that, on the contrary, his efforts were directed against the policy, and in opposition to the authorized legislative committees, and authority of the National Dental Association, and of the Dental Society of the District of Columbia, and were contrary to the best interests of the dental profession, and calculated to lower its standing in the Navy of the United States, that the National Dental Associatisn, through its proper committee, strongly advocated the passage of a law for the employment of dentists, giving them rank as officers in the Navy of the United States, and that the said Bryant, of his own motion and in opposition to the policy of the National Dental Association, and of the defendant corporation, had introduced bills, which he advocated, which did not confer rank upon dentists employed in the United States Navy.

(6.) Answering paragraph 6 of said petition the defendant
12 says that at a regular stated meeting of its members held on the 15th day of March, 1904, in the city of Washington, District of Columbia charges were preferred against the petitioner, Emory A. Bryant, by the persons whose names are attached to said charges, as follows to wit:—

WASHINGTON, D. C., *March* 15, 1904.

We, the undersigned, do hereby charge Dr. Emory A. Bryant, a member of this society, with the following acts of unprofessional and unethical conduct:

1st. Under date of March 10th, 1904, he wrote the Commissioners of the District of Columbia, charging the board of examiners, every member of which is a member of this society, with unprofessional and unethical conduct, false to the oath taken by them and to the profession they represent, and insinuates that they have issued a circular letter at variance with truth and honesty.

2d. That he interfered with the work of a regular committee appointed by this society on legislation.

3d. That in the evening of February 19th at an adjourned meeting of this society, he said that the members of this society were too small cattle for him to deal with, and before taking his seat characterized the members as being a lot of cats.

4th. That he has been a disturbing element in this society for the past twelve months.

(Signed) JNO. H. LONDON.
C. W. APPLER.
M. F. FINLEY.
W. E. DIEFFENDERFER.

There was filed with the committee a certified copy of the communication of March 10, 1904, as follows, to wit:

WASHINGTON, D. C., *March* 10, 1904.

To the Honorable Commissioners of the District of Columbia.

GENTLEMEN: I have before me the following circular of the board of dental examiners of the District of Columbia.

Board of Dental Examiners for the District of Columbia.

OFFICE OF THE SEC'T, COLO. BUILDING,
WASHINGTON, D. C.

GENTLEMEN: Please find appended a copy of the Stockton resolution with which we are in hearty accord. We are ready to take up the reciprocal feature with you, but in view of the defect in our law, just passed, it not being in full accord with the said resolution, we request that your board do not issue certificates to persons unless they are reputable in addition to their complying with the competency, moral character and five year clauses.

Stockton resolution appended.

(Signed) W. E. DIFFENDERFER, *Sec.*

If you refer to the Stockton resolution, you will find it does not say merely "conditions" but "specific conditions". This word is

left out of the above, and makes quite a difference. Now gentlemen, what right have the members of this board to try to discredit this law in the eyes of the other State boards and profession? Is that one of the essential duties of a board appointed to enforce the law, first to discredit it? According to the specific conditions
of the Asheville or Stockton resolution, I had no right to in-
14 corporate any additions to be made in the new certificate,
other than stated in these conditions, viz "Shall attest to his moral character and professional attainments." The word "reputable" would have been superfluous in connection with the word moral as used. Again the Asheville resolution is a record of the National Examiner's Asso. and copies are in the hands of all the boards throughout the country and in it are "these specific conditions" agreed to and enforced between all the boards who operate under it, not to the board giving the certificate, and to the one rereiving it. Now what is the motive in reminding the boards of some defect in their laws, a defect that I defy them or any one else to show in any one particular point? What is the motive?

I know well enough, and I have no doubt your honorable body also can reason it out from the records of your office.

Now, Mr. Commissioners, I object to this circular, first as the one who drafted the law, second, as the one through whose efforts it was passed, third, for the fact that it is a misstatement of facts, fourth, that it discredits a law these men are there to enforce, fifth, that its effect if left alone, would be to nullify the attempt to get national interchange of dental licenses, by means of having the same law in every State and Territory in the Union. Sixth, that the action of this board is unprecedented, unethical, unprofessional, false to its office and the profession it represents and the oath they took when they accepted their offices.

I suggest Mr. Commissioners, that your honorable body direct the board of dental examiners of the District of Columbia to withdraw this circular at once by due notice to those to whom they have sent the same, and issue a new circular, based upon facts, truth
and honesty.
15 Very resp'ly submitted.
(Signed) EMORY A. BRYANT.

I certify that the foregoing is a true copy of the original letter.
(Signed) L. M. FOX,
Notary Public, D. C.

March 14th, 1904.

The following charges against the petitioner, Emory A. Bryant, were then presented by Drs. Finley, Donnally, Rust and Schooley, as follows, to wit:

It is hereby alleged that the accompanying letters written and signed by Dr. Emory A. Bryant, a member of this society, evidence unprofessional conduct on the part of the said Bryant, in this, that

the said letters are (*a*) false in a number of material statements (*b*) that they are vicious in tone (*c*) that they disclose a mischievous and unnaturally antagonistic and evil purpose (*d*) that they contain threats to carry on a contention by him, the said Bryant, which is discreditable to the dental profession, dishonoring to the Nat. D. Asso. and degrading to this society, and which contention, if further pursued in the spirit and manner adopted by the said Bryant, is calculated to embarrass, discredit and defeat express worthy objects of the profession.

In connection with this alleged unprofessional conduct of Dr. Emory Bryant, your attention is invited to the first ten lines of article 3, section 1 of your by-laws.

(Signed) M. F. FINLEY.
WMS. DONNALLY.
D. N. RUST.
H. M. SCHOOLEY.

16 Accompanying said charges were the letters addressed by the petitioner, Emory A. Bryant to Dr. C. C. Chittenden, president of the National Dental Association, under date of February 28, 1904, hereto attached, marked Exhibit No. 2; to Dr. Chittenden under date of February 29, 1904, marked Exhibit No. 3; letter to Dr. J. A. Libbey under date of February 7, 1904, marked Exhibit No. 4; letter from the petitioner to Dr. Chittenden under date of March 6, 1904, marked Exhibit 5, letter from the petitioner to Dr. Chittenden under date of March 7, 1904, marked Exhibit No. 6, and a letter addressed by the petitioner to Hon. George W. Taylor under date of March 14, 1904, marked Exhibit 7, all of which letters are hereto attached, and it is prayed may be read and referred to as a part hereof, and there was also filed with said committee the following specifications referring to the letters aforesaid.

WASHINGTON, D. C., *March* 26, 1904.

Drs. Wiber, Bates and Sharp, committee of the District of Columbia Dental Society.

GENTLEMEN: In response to your suggestion, we have the honor to refer in detail to some particular parts of the letters of Dr. Emory A. Bryant, which it is alleged, "evidence unprofessional conduct on the part of the said Bryant," namely: First, as to "*a*" of the allegation, Dr. Bryant's letter of February 28th, 1904, states, "Their bill only carries *one man* at a higher rank than mine, *two* at the *same*, and *twenty-seven* at a lower *rank*. In other words, they
17 for the purpose of giving *one man* one rank higher are willing to put in *twenty-seven* at a lower rate. In the medical — it takes an assistant surgeon three years to be able to be advanced to the lowest grade of my bill, viz.—passed assistant surgeon. The trouble is Dr. 'to be frank,' they are so bitterly opposed to yours truly that they are willing to sacrifice the twenty-seven for one to

beat one." "They put in twenty-seven as assistant surgeons, two as passed assistant surgeons, and one as surgeon, while mine makes them all passed assistant surgeons from the jump in." It is alleged that each and every sentence and statement of the above quotation is false, misleading, and, so far as they are accepted as facts, are calculated to win favor for a bill disapproved by the Navy Department and by the dental profession, and to discredit and defeat the approved efforts of the authorized representatives of the dental profession, inasmuch as the bills and the Navy Department's letters show for themselves that the bills offered through the authorized representatives of the National Dental Association do provide in each and every bill for rank while the bill, S. 4032 claimed by the said Bryant as his bill, does not provide for rank but provides that the Surgeon General with the approval of the Secretary "be authorized to employ dental surgeons to serve," etc.

The bills and the department's letters in reference to the facts above set forth are respectfully referred to you, the committee, and your attention is invited to the fact disclosed in the said Bryant's letters, namely, that the said Bryant had knowledge of the facts by his *profession* of the department's letters and could not but see the fact in the Department's letters, if himself ignorant of the fact that a man *employed* by the Surgeon General is not an appointed officer of rank.

18 Corroborative of the above, Dr. Bryant, in a letter to Representative G. W. Taylor, under date of March 14, 1904, after quoting the department's letters in which "shall have the rank" is contrasted with "instead of being employed", falsely asserts "that the bills referred to, 4032 and 11,523, give rank and pay and equal status with the medical corps in the navy cannot be questioned."

Dr. Bryant's letter of March 6 to Dr. Chittenden truthfully admits that he "did not get the matter of rank carried in my bill right" and then falsely asserts that a quoted portion of "the words of the Secretary of the Navy in his communication (private) to the chairman of the committee on naval affairs of the Senate, under date of March 2d." applies to his bill (S. 4032) his words being "the above shows that it does give rank but gives the lowest rank provided in Donnally's bill." The fact is that Secretary Moody's letter of March 2d makes no reference whatever to S. 4032, which Dr. Bryant claims as his bill. The department's letter of February 8th disapproved Senate bill 4032 and expressed the department's preference for a "measure suggested" to the naval committee in the department's letter of January 26th, 1904, and this your committee can plainly see by reading the enclosed copy of the department's letter of February 8th, 1904.

Dr. Bryant's allegation in letter of February 28th, to Dr. Chittenden as to the method adopted to secure the adoption by the Southern branch of the National Dental Association of certain resolutions approving the bills advocated by the authorized representatives of the National Dental Association and disapproving the bill claimed

by the said Bryant as his bill, are alleged to be false and your
19 committee is hereby furnished with the names of Dr. J. Y. Crawford, Nashville, Tenn., chairman of the committee on resolutions of the Southern branch of the National Dental Association, Dr. George S. Vann, Gadsden, Ala., president of the Southern branch of the National Dental Association, J. H. Crossland, Montgomery, Ala., Dr. M. F. Finley, and Dr. Wms. Donnally as witnesses to prove Dr. Bryant's allegations false.

Second, as to "*b*" of the allegations: The tone of Dr. Bryant's letters is vicious in general and particularly in the following quotations:

"I am the last one on earth to stop fighting the filth that has control in this locality."

"I once before told them that 'if it was politics they wanted, I would give them all they wanted and a damn sight more before I was through with them, and I kept my word."

"I just give you this tip, 'there will be hell to pay' before this thing ends. * * * "The black flag is up and I have nailed her to the topmast, 'no quarter will be asked or will be given."

"Of all the damn fool moves" etc.

"A lie pure and simple."

"They are so bitterly opposed to yours truly that they are willing to sacrifice the twenty-seven for one to beat one," etc.

Third, in reference to "*c*" and "*d*" of the allegations, all the letters, in their relation to each other, to the quotations hereinbefore made and to the statements made by Dr. Bryant before the Southern branch of the National Dental Association the, morning of February 26th, should be taken together to sustain the specifications under "*c*" and "*d*".

20 The well known fact that both the National Dental Association and the District of Columbia Dental Society have authorized representatives in matters of legislation, committees entrusted for years with the responsible duties assumed by Dr. Bryant, should also be considered, in order that the grossly unprofessional conduct of Dr. Bryant in assuming an unnatural antagonism to the profession's policy may be more clearly disclosed by his letters. All loyal members of the profession are bound by the ethics and the policy of the profession.

The truth of the representations made by Dr. Bryant concerning representations made to him by Kirk, Libbey, G. V. I. Brown and others should be tested by the committee communicating with the gentlemen named, and it is respectfully suggested that the chairman pursue this course.

Respectfully submitted.

(Signed) M. F. FINLEY.
WMS. DONNALLY.
D. N. RUST.
H. M. SCHOOLEY.

That upon the presentation of said charges in accordance with section 1, of article 3 of the by-laws of the defendant corporation, as follows, to-wit:

"Any act of special immorality of unprofessional conduct alleged to have been committed by a member shall be referred to a special committee of three, who shall examine into the case and report at the next regular meeting."

"Whereupon, if the charge has been sustained, the offending member may, by a vote of two-thirds, be reprimanded or expelled, provided the accused shall have an opportunity for defence before final action is taken on his case."

The president proceeded to appoint a special committee of three, in accordance with said section 1, to examine into the case and report its findings at the next regular meeting;
21 that the president named Drs. Wiber, Benson, and Shafhirt.

Dr. Bryant, the petitioner, was present and objected to Drs. Benson and Schafhirt, whereupon the president withdrew their names, and appointed in the place thereof, Drs. Bates and Sharp, to which committee, as then constituted, the petitioner made no objection whatever, stating that he was satisfied with its person-el*l*; that thereupon the charges hereinbefore set forth having been read by the secretary of said society they were by the president referred to said committee for consideration and report; that thereafter and before the next regular meeting, which was set for April 19, 1904, the said committee met and determined upon the method of procedure to investigate said charges, which required that all allegations made in support thereof should be submitted in writing, that the petitioner should have a full and complete copy of the charges and specifications, and of all allegations in support thereof, and should be given ample opportunity to meet the same by counter-statements, and by such statements as he, himself, desired to make; that petitioner raised no objection whatever to said mode of procedure and did not demand the right to have witnesses sworn or cross examined or to rule out testimony taken, but in all things acquiesced in the method of trial adopted by said committee; that copies of the charges and specifications and of all statements made in support thereof were furnished to the petitioner, and that he replied to the same in writing, submitting two voluminous statements and many documents in defence to said charges; that petitioner admitted the authorship of the letters hereinbefore referred to, and set forth as exhibits; that petitioner, having been given full and ample opportunity to make his
22 defence, and having availed himself of the same, and having entered no objection to the method and mode of investigation pursued by the committee, the committee thereupon proceeded to consider said charges separately and took a separate ballot as to each charge, which said balloting resulted after the consideration of the evidence taken in support or defence of each charge, in the committee unanimously finding every charge made sustained, with the single exception of charge designated as charge 4. That on the 19th

day of April, 1904, at the next stated meeting of the defendant corporation, at which the petitioner was present, and in which he participated, the aforesaid committee made its report, its chairman having first read in open meeting the charges which had been preferred against the petitioner as aforesaid, the report of said committee — as follows, to-wit:

We, your committee appointed to investigate the charges and allegations preferred against Dr. Emory A. Bryant, an active member of this society, beg leave to report that we have carefully considered the charges and allegations, and the answers thereto, and after due consideration, submit the following as our finding, to-wit:

In regard to the charges preferred by Drs. London, Appler, Finley and Donnally, charges 1, 2 and 3 are sustained—charge 4 is not sustained.

In regard to the allegations signed by Drs. Finely, Donnally, Rust and Schooley, we find that allegations marked, *a*, *b*, *c* and *d*, are all sustained.

Respectfully submitted,

(Signed) GEO. M. SHARP,
ROBT. A. BATES,
D. E. WIBER, *Committee.*

23 Thereupon it was moved and seconded that the report of the committee be received and adopted, which motion was duly carried; thereupon Dr. M. F. Finley moved that the petitioner, Dr. Emory A. Bryant, be expelled from the society known as the District of Columbia Dental Society, which motion was duly seconded by Dr. D. M. Rust; thereupon a motion was made by Dr. Walton and seconded by Dr. Smithe that all the evidence in the case be submitted, which motion was defeated; thereupon Dr. Bryant requested fifteen minutes within which to make a statement or defence before the society, and on motion was accorded double the time he asked, which time he occupied largely in personal attacks upon members of the defendant corporation. Thereupon the motion of Dr. M. F. Finley that Dr. Bryant be expelled from the society was duly put, and the chair ordered the vote to be taken by roll call, which was done, said vote resulting in the motion of Dr. Finley being carried by a vote of thirty-nine to fifteen.

9. Answering paragraph 9 the defendant corporation admits that the letters therein referred to were addressed to the National Dental Association, and to the president of the Maryland State Dental Society, advising them of the expulsion of the petitioner from the District of Columbia Dental Society, as was the duty of this defendant to do.

Answering paragraphs 10, 11, 12 and 13, and answering generally, the defendant says that the charges designated 1 and 2 preferred against the petitioner by Drs. London, Appler, Finley and Dieffenderfer were founded upon a letter written by the petitioner and ad-

dressed to the Commissioners of the District of Columbia, and
24 hereinbefore referred to and set forth, and that the authorship of said letter the petitioner himself admitted, both before the society and the aforesaid committee, and upon said letters the said charges were sustained. That the charges made by Drs. Finley, Donnally, Rust and Schooley, hereinbefore referred to, were based entirely upon the letters, copies of which are hereto attached as Exhibits 2, 3, 4, 5, 6 and 7, and that the authorship of each and every one of said letters was admitted by the petitioner both before the society and the committee. That upon said evidence, being said letters referred to as exhibits as aforesaid, all of the charges designed "*a*" "*b*" "*c*" and "*d*" made by Drs. Finley, Donnally, Rust and Schooley were sustained.

Answering further the defendant states that at or about the time the petitioner, Emory A. Bryant, was elected a member of the defendant corporation he subscribed to its constitution and by-laws and became bound thereby in his corporate duty to the District of Columbia Dental Society.

The defendant answering further says that section 1, article 3 of its by-laws under which the charges against the said petitioner were preferred, and under and by virtue of which he was expelled from the District of Columbia Dental Society is in accordance with natural justice; that the action taken against the petitioner was in accordance with the by-laws of the defendant corporation; and that the decision arrived at whereby he was expelled from membership in said corporation was taken and made in good faith, and was not the result of malice or caprice and did not proceed from anything other than a fair and honest exercise of the power given by the by-laws of the defendant society, and the duty thereby imposed upon said society.

25 Answering further the defendant states that the petitioner was given the fullest and amplest opportunity for defence, before the committee, appointed under the section of its by-laws hereinbefore quoted, and availed himself of the same to the fullest extent; that at petitioner's own request he was given an opportunity to make his defence before the society itself, but instead of availing himself of such opportunity to make such defence, he expended most of the time allowed him in personal attacks upon members of the defendant corporation, and that neither by action of the committee aforesaid, or by any action taken by the society or the president thereof, was he prevented from stating any fact or circumstance material to his defence, or which he might have considered material to his defence, nor was he in any way taken by surprise, or denied any rights to which he was entitled.

Answering further the defendant states that the method of expulsion of the petitioner as one of its members was in accordance with the true intent and spirit of its constitution and by-laws and was in every way proper, regular and legal.

The defendant denies further that there was any prejudice against

the petitioner on the part of a majority of its members, and asserts that the presence of its attorney was for the purpose of so advising the defendant that all of the petitioner's legal rights might be preserved and that no injustice whatever might be done him in the premises. This defendant denies the allegations of the petitioner that the charges preferred against him were not read and that twelve of the members present at the meeting at which he was ex-
26 pelled had never heard the charges against him read, and asserts to the contrary that the charges against the petitioner were read both at the meeting at which they were presented, and by the chairman of the committee that had considered them, at the meeting at which the petitioner was expelled. This defendant denies further that the petitioner had any financial interest in the property of the society, which consists of the books and treatises on dentistry hereinbefore referred to, and is of no intrinsic value whatever.

Answering specifically the allegations of paragraph 6 and 8 that Drs. Donnally and Schooley were not members of the defendant corporation, the defendant denies said allegation and states that they were legal members of the District of Columbia Dental Society at the time in said petition mentioned.

Wherefore the premises considered, and having fully answered the petition herein filed, the defendant prays that the said petition for a writ of mandamus may be dismissed, and that the defendant be hence dismissed with its reasonable costs in this behalf expended.

DISTRICT OF COLUMBIA DENTAL SOC.,
By WILLIAM D. MUNROE, *President.*

CONRAD H. SYME,
CHAS. A. DOUGLASS,
Attorneys for Defendant.

DISTRICT OF COLUMBIA, *ss:*

I, William D. Munroe, do solemnly swear that I am the president of the District of Columbia Dental Society, and by it duly
27 authorized, for it and in its behalf, to subscribe to the answer hereto attached. I furthermore swear that I have read the said answer, and know the contents thereof, and that the facts therein stated on my personal knowledge are true and those stated upon information and belief I believe to be true.

WILLIAM D. MUNROE.

Subscribed and sworn to before me this 16th" day of June, 1904.

J. BARTON MILLER,
Notary Public, D. C.

[SEAL.]

28

EXHIBIT No. 1.

District of Columbia Dental Society.

Recorded Jan. 10, 1899.

District of Columbia Dental Society—This is to certify that under the provisions of an act of Congress entitled "An act to provide for the creation of corporations in the District of Columbia by general law" approved May 5, 1870, the undersigned hereby agree to become a body corporate under the name of the District of Columbia Dental Society, the existence of said corporation to be for a period of twenty years from the 20th day of December, 1898. The objects of this corporation are the advancement of the dental profession and the promotion of social intercourse and kindly feeling among its members. The office of this corporation shall be kept in the city of Washington, District of Columbia, and the affairs of the corporation for the first year are to be managed by the following named trustees, viz:—

R. B. Donaldson,
H. M. Schooley,
J. Custiss Smithe,
J. Hall Lewis.
J. B. Ten Eyck,
Henry B. Noble,
Henry C. Thompson, and

In witness whereof we have hereunto set our hands and seals this the 7th of January, 1899.

R. B. DONALDSON.
J. HALL LEWIS.
HENRY C. THOMPSON.
HENRY B. NOBLE.
H. M. SCHOOLEY.
J. B. TEN EYCK.
J. CUSTISS SMITHE.

DISTRICT OF COLUMBIA, *To-wit:*

29 I, Jos. Blackwood, a notary public in and for the District of Columbia, do hereby certify that R. B. Donaldson, Henry B. Noble, J. B. Ten Eyck, J. Hall Lewis, H. M. Schooley, J. Custiss Smithe and Henry C. Thompson, parties to the instrument in writing hereto annexed and having date on the 7th day of January, 1899, personally appeared before me in the District aforesaid and they being personally well known to me as the persons who signed and executed the said instrument in writing and duly acknowledged the same to be their act and deed. Given under my hand and seal this 7th. day of January, 1899.

J. H. BLACKWOOD,
Notary Public, D. C.

[SEAL.]

30 EXHIBIT NO. 2.

FEB. 28*th*, 1904.

Dr. C. C. Chittenden, president National Dental Association, Madison, Wis.

DEAR DR.: Donnally, through till I happen not to be in the meeting, got a resolution through the Southern branch the other day endorsing his naval bill. On the same lines, he brought out another resolution against my bill, No. 4032—and as I did not know that a resolution was before the body, only coming into the room when he was giving my bill Jessie, I took it for another one of his personal attacks upon me, and on that line made a speech on the subject. I was asked "What I wanted to do" and I said "Nothing." I did not suppose what I wanted had anything to do with the discussion till at the ending up the resolution was read and that was the first I knew of it. The previous question was put to shut off any further debate, and of course I had to submit gracefully. Had I known of this resolution the fur would have been flying that section. Both of these resolutions were put through at the end of the meeting when there was not 25 people present, and do not mean the sense of the body under any circumstance. Don-ally said my bill did not carry "rank" and that was a lie, pure and simple. Dr. Libbey chimed in and said he would fight any bill that did not carry a high rank, etc. Now for the love of heaven where are these people's brains! Their bill only carries ONE MAN at a higher rank than mine, TWO at the SAME RANK, and TWENTY-SEVEN, at a lower RANK than mine. In other words,

31 they, for the purpose of giving one man one rank higher, are willing to put in TWENTY-SEVEN at a lower rank. In the medical it takes an assistant surgeon three years to be able to be advanced to the lowest drage of my bill, viz—passed assistant surgeon. The trouble is, Doctor, "to be frank" they are so bitterly opposed to yours truly that they are willing to sacrifice the 27 for one to beat one. That's it in a nut shell. I can see their finish when the dental profession wakes up from its present dream to the true state of affairs. Now just take my bill and compare it with theirs. They put in 27 as assistant surgeons 2 as passed assistant surgeons, and one as surgeon, while mine makes them ALL passed assistant surgeons from the jump in. Theirs is $150 per year less pay then mine per man so far as all except the examiners are concerned.

Of all the damn fool moves I ever saw, this latest takes the cake. I hope they will be able to get their bill, and then I know one man who will not be THE MAN. The local disturbing conditions is now transferred from the local to the national body, and if there is such a thing as justice in the national asso., it will be short and sweet. If personal animosities are to be the backbone of legislation for the profession, the quicker the thing is known, the better it will be for all hands.

There is no one on earth that deplores the personal fight here

more than I do, but I am the last one on earth to stop fighting the filth that has control in this locality. Like my friend Senator Tillman, "When I have to handle manure, I do it with a pitchfork." I do not mind them fighting me personally so long as this does not injure anyone but myself, but when it comes to using my profession as a mop to swipe me with at the sacrificé of my profession or my friends, that is another matter.

32 I had intended to drop the matter when they had succeeded in getting their bill endorsed by the Southern branch in the first instance, but when they came back a second time, and the matter became by their own doing, that is where I change my tactics and trouble begins. I once before told them "if it was politics they wanted, I would give them all they wanted and a damn sight more before I was through with them," and I kept my word. I just give you the tip, "there will be hell to pay" before this thing ends, I am not engaged in fighting men, but I am out for "beans" on their principles and motives. "The black flag is up and I have nailed her to the top mast." No quarter will be asked or will it be given. A fair field and no favors is all I ask. I will sign my name in full to anything I say or do. I am not under cover, but out in the open.

Sincerely and fraternally yours,

(Signed) EMORY A. BRYANT.

EXHIBIT No. 3.

FEB. 29TH, '04.

DEAR MR. CHITTENDEN: Donnally has played hell now all right—all right, He tried to run in his bill on the naval appro. act, got ruled out on a point or order made by Chairman Foss of the House Naval Committee, and now that settles for good and for keeps that bill in the naval committee and gives the professiour a black eye, it will be a long time before it can get over it. I doubt

33 now if a bill indorsed by the department and the President would go through this session. Any man with any ordinary sense would never had tried to force legislation over the head of a congressional committee but as Donnally never was noted for any kind of sense no one will wonder at the result. Kirk, Libbey, Burkhardt, Gallie, Grouse and every man that had anything to do with Donnally have said that he was the worst man in the profession to be in charge of this legislation. The whole delegation that went with Donnally last year on this same bill said "Donnally killed the whole thing." I tried to get him off the committee when I was at Asheville but it was no go, they said "he should be displaced, but it would kill the poor old man." You wait till the time comes for these people to face the music! They talk one way and act another no matter how much the profession suffers by their actions. Burkhardt told me "he could pass the bill alone if Donnally could be quieted." I saw Sec'y Moody today and had a good chat with him and think it barely possible something may be done this session yet, but I have my serious doubts.

He got a Democrat to try to ride over a Republican House and committee, just how much of a show does not require monumental brains.

Sincerely yours,
(Signed) EMORY A. BRYANT.

34 EXHIBIT No. 4.

WASH., D. C., *Feb. 7th*, 1904.

MY DEAR DR. LIBBEY: I enclose you bill regarding dentists in the navy for your consideration, No.'s 4032 and 11523, Senate and House bills resp'ly, which I have introduced. I want you to look over the bill carefully and see if it is not all that the profession has ever asked for and a little bit more. I first found out that there was no chance of House bill No. 81 to get the endorsement of the Navy Dept. and that they would endorse mine, I had it introduced and it is already endorsed by the surg. general of the navy, Dr. Rixey. I do not want you to think for an instant that I mean any disrespect to your committee in this matter, and my reasons I will give you personally when you come to town or at any time, if you will consider the information confidential. I am perfectly conversant with just what the War Dept. will do too, but that is no funeral of mine just now.

You will remember that I told you that the proper thing to do was to get the ideas of the Navy Department on this subject and make up a bill accordingly and that Dr. Rixey was the best friend the dental profession ever had or ever would have. I have written Morgan and enclosed the bill, and I hope you, Morgan and Brown will vote to adopt this bill in lieu of House bill No. 81—and take the matter off my hands and then your committee will get all the credit you have got had the other bill been taken up and passed which it would not I assure you. I just had an amendment to the Dist. dental law passed (in three weeks) incorporating the
35 Asheville resolution on reciprocity. The President signed the bill yesterday and I have the pen he did it with. In haste

Sincerely and fraternally yours,
(Signed) EMORY A. BRYANT.
BRYANT.

Copy.

J. A. Libbey, 524 Penn. Ave., Pittsburg, Pa.

EXHIBIT No. 5.

M'CH 6, 1904.

MY DEAR MR. CHITTENDEN: In my letter to you of Feb. 28th, 1904, I find upon further investigation I did not get the matter of rank carried in my bill right, and as I am always willing to acknowl-

edge when I am wrong, I do so freely in this case. I got my information as to the rank from one of the officials of the dept. and he told me later he was wrong and I immediately went to the Surgeon Gen'l to be sure I did not get anything further mixed. Now I will take the words of the Sec't of the Navy in his communication (private) to the chairman of the Committee on Naval Affairs to the Senate under date of March 2d, and which I was only able to secure from the com. yesterday (M'ch. 5th) "The main point of difference between the bill heretofore suggested and that now proposed are that the latter authorizes thirty instead of fifteen dental surgeons, and provides that they shall have rank and pay of acting assistant
surgeons, instead of being employed under contract at, not to
36 exceed, eighteen hundred dollars per annum" "acting assistant surgeons * * * have the rank of assistant surgeons and receive the pay provided for the latter."

As soon as I can get this document so I can get a copy struck off I will send it to you. I had to return it right away, as the communication had just a few minutes before been received from the department, and has not yet reached the eyes of the committee and I doubt if the chairman has yet seen it. The above shows that it does give rank but it is the same as the lowest provided by Donnally's bill, but as Donnally's bill would never be passed, has already been killed as the proceedings of the House will show, on account of trying to get the high rank feature in, and this bill will pass, my statements from misinformation and not from motive to misstate the facts, I hope this explanation will settle that matter.

The bill, as it will pass, will make the appointments by the President, direct and removals from the same source. The Surgeon General informs me "that our corps is taken way above the conditions which obtain in the medical corps when they were put in the service.

I told Libbey and I told Donnally and Finley that the proper way to go about the getting legislation was to get in close touch with the Navy Department and get the very best that the department would sanction. I told them how friendly Dr. Rixey was to our profession over a year ago, but what I said had no influence toward changing Donnally's ideas and plans. The rest of them acknowledged the stand I took, but they gave way to Donnally and by so doing they defeated the reasons of their appointment by the National.

37 Had Donnally been satisfied with the first endorsement of his bill by the Southern branch and went ahead and not tried to discredit my bill and my motives as well as myself to the Southern branch, I would never have taken any further steps with my bill, or tried to get it through for that matter. But the position he took forces me to protect myself, and when the whole matter and the documents are published, as they will be word for word, I am not afraid that my course will meet with the approval of the whole dental profession. Now to another matter read the editorial of Kirk in March Cosmos on the "reciprocity of license." Why did not Dr.

Kirk give our law as it is, showing that all graduates or non-graduates have to take an examination before our board of examiners, only excepting such as is provided for in the reciprocity clause? Why did he not show the clause that was stricken out as well as the one inserted? He pats it on the back one minute and tries to kick ten kinds of holes in it the next. He harps on the "higher standard." Why Doctor anyone with common sense knows that a law is and cannot be retroactive. Who is it we wish to reach in the reciprocity of license between States but the men who have been in practice, his standard is set for good and all and no law on the face of the earth could be devised which would reach the man of the past upon the basis laid down by Kirk in his editorial. In the first place with our law as it stands, outside of the reciprocity clause, there is no State law in the country with like conditions. Our examining board makes its examination of the future under the following clause "(look at Polk's register for law)" sect. 3—"That it shall be the duty
38 of the board of dental examiners * * * Third, to test the fitness and pass upon the qualifications of persons desiring to commence the practice of dentistry in the Dis. after the passage of this act, and certify to the health officers for registration such as prove under examination in theory and practice of dentistry in said District." &c. Now if you can show me a law in the country that gives any State board similar conditions and standard I would be pleased to know it. Why, Doctor, WE OF THE DISTRICT OF COLUMBIA HAVE THE HIGHEST STANDARD OF ANY STATE OR TERRITORY IN THE UNION, as the standard is only limited by the brains of the members of the board. Absolutely all of the questions of standard are left to the board. Now then do you suppose for one instant that a similar law could be passed in any other State or Tet. with these conditions? Not on your life could it be done. Why if Kirk's standard was taken and a reciprocity law had been passed upon the plan laid down by him, we would have been hung up forevermore, and not a ghost of a chance to enter into reciprocity. As it is now we have opened to the whole country an invitation to exchange and will soon begin with other States, and we have made all the restrictions called for or necessary by saying the applicant must be competent and moral and have been five years in active practice, or rather, legal practice, which means of course that he has a license from his State board. Now then just for illustration, suppose every State in the Union accepted Dr. Kirk's plan word for word and his standard, would that make any difference in the standard of the men who have been in practice for five years or more, what manner would Kirk raise the standard of 35,000 now in prac-
tice? Now then we will accept the past as a fact, and
39 the future is in the hands of the various State boards, and if they follow the license expressed by you "that the chief business of the examination boards is to live up to their promises to the public" and give us competent men with their diplomas, why the question of STANDARD has taken care of itself. As I said before,

"Kirk is a good man to tie up to OCCASIONALLY," but here is where I do not tie up. We are dealing in facts and not theories, and Kirk's plan is THEORY purely and specifically. That plan will not and could not be adopted, and if the country has got to wait on its adoption, the day of exchange of license will never appear. It is TOMMY ROT.

Sincerely and fraternally yours,
(Signed) EMORY A. BRYANT.

EXHIBIT No. "6."

MARCH 7TH, 1904.

Dr. Chittenden, D. D. S., President National Dental Asso., Madison, Wis.

DEAR DR.: I inclose you the latest report from the Navy Department, which report was made upon my representations to the department after having got possession of the copy of the Mitchell letter, copies of which I sent you. Here we have the rank defined as well as the pay, etc., and the appointment of the corps by the President, and also the revocation of the same at the pleasure of the President. Now I have got this matter straightened out and upon a basis the profession will certainly endorse, as it is equal in status to the medical corps of the same rank and under the same conditions. I have done this simply upon my personal standing and not as a representative of any society, national or otherwise. I am in a position to appoint a committee of legislation on this bill if I choose, and claim to represent the society of which I am vice president with full powers in this Dist. As I told you in a former letter I have a bill before Congress of the greatest interest to the whole dental profession, and am desirous of using all my time in that direction, and do not want to be placed in a position of opposition to any one or any number or any part of my profession and will not unless I am forced to it. I have got the bill where there is not a thing to do in the line of work for its passage, all that it needs now is to convince Congress that the bill is acceptable to the dental profession as a whole, and the bill will pass itself. Now Doctor, it is up to you, whether it passes or not, for I am tired of having my motives questioned, and I shall depend upon you to use your efforts with Doctor Fin*e*ly the chairman of the National Dental Asso. legislative committee on navy and army legislation, to agree to the terms of the Navy Department and allow the bill to pass. This committee is by its own action in the House trying to force the bill they had over the heads of the House Naval Committee, discredited itself before that committee, and I doubt if it could have any influence one way or another but the fact of this com. withdrawing all objections to the department measure would have ite effect in showing no opposition, and the bill would be sure to pass without a person

going before it other than the Congressman and Senator
41 whom I had introduce the bill. I am done so far as my personal work is concerned. Finley himself told A. J. Brown "that he could see no reason why the bill was not a good one and should pass" not more than two weeks ago, but what stand he will now take on account of the personal fight on here, I do not know. It would seem as if a man who had received as much from the profession as he has in the way of honors, could raise himself above petty personal anamosities and act for the interests of his profession. I do not expect anything of that kind from Donnally, because he is built up in character in such a manner that it would be impossible of him but Finley is a different kind of man, or at least I think he is, and his future course alone can tell. Have Finley address a letter to Senator Hale, chairman of the Senate Naval Committee and to Foss, chairman of the House Committee, saying his committee withdraws all opposition, or endorses the bill, and it will pass. No one need go to Congress. Keep Donnally away, or he will kill the bill simply because he advocates it. Ask Kirk, Burkhardt, Gallee, G. V. I. Brown, A. J. Brown and anyone else who ever went before the committee of Congress, and they will tell you the same thing, as they have told me and others. Again I will say, it is up to you if the bill pass or not. For that matter a personal letter from you as president of the National endorsing the bill will pass it without any reference to the committee. Now move quick or it will be too late, as Congress is to get away by the first of May and April if possible. I am done so far as I am concerned but I am going to publish the whole matter and the documents.

Sincerely and fraternally yours,

(Signed) EMORY A. BRYANT.

42 EXHIBIT No. 7.

1320 NEW YORK AVENUE,
WASHINGTON, D. C., *March* 14, 1904.

Hon. Geo. W. Taylor, House of Representatives, Washington, D. C.

MY DEAR MR. TAYLOR: Yours of even date with enclosed copies of resolutions of the Southern branch of the National Dental Association, under date of Feb. 24, and 26, 1904, and the personal letter of Dr. J. H. Crossland, secretary, attached.

In reply thereto I will first quote you article XVIII, section 4 of the constitution of the National Dental Association regarding branches of this organization, of which to date only refers to the Southern Branch of the National Association.

"SECTION 4. Each branch shall pay its own expenses and no branch shall be deemed for any purpose the agent of the association or have power to incur any obligation in its behalf."

I might add section 2 of the same article.

"SECTION 2. Branches shall have such powers and privileges and be subjected to such obligations as shall be determined upon from time to time by the National Association in annual session."

You will readily see from this that the resolutions as passed by the Southern branch can only be considered as voicing the sentiments of its own members, the same as any other dental society formed from a group of States, and is not national in character only to the extent of the group of States it represents, and its total membership is 130.

43 That the Southern branch is a representative body of dentists, cannot be questioned; but that these resolutions can go forth unchallenged as the sense of the whole body is another story. The resolution of Feb. 24, was enacted just at the close of a meeting a few moments before adjournment when there was a very small number of members present, and it is doubtful if they knew anything about the subject matter, and I might say cared less. Had the matter ended with this first resolution I would have taken no exceptions; but regarding the second resolution of the 26th instant, that is another question. This resolution was passed under a misapprehension of the true state of the subject matter, and at a meeting which had not more than 30 members present, the majority having left the city the night before and were elsewhere. While it is true that I took the floor during the discussion, and explained my position in regard to the bill No. 4032, under discussion, I did so without knowing that a resolution was before the body, having come into the room during the discussion. The first that I knew that a resolution was before the body, was after the previous question had been moved when someone asked to have the resolution read. Not being a member of the Southern branch and only having the floor through courtesy to my membership in the National Dental Association, I did not consider that I would be privileged to assume any further controversy in the matter. The documents I presented to the association following my discussion, will have to speak for themselves to the dental profession when the matter is published in the proceedings. Had I known of the resolution, my discussion would have been of a different tenure I assure you. You will notice that the date

44 of these resolutions is previous to the recommendations of the honorable Secretary of the Navy, under date of March 3, 1904, to the Honorable Eugene Hale, chairman of the Committee on Naval Affairs of the Senate.

In which the honorable Secretary withdraws his previous recommendations of May the 29, 1902, Jan. 26 and Feb. 8, 1904 reporting upon bills for the employment of dental surgeons in the navy, from which letter (March 3, 1904), I quote the following:

"The main points of difference between the bill heretofore suggested and that now proposed, are that the latter authorizes 30 instead of 15 dental surgeons and provides that they shall have the rank and pay of acting assistant surgeon instead of being employed under contract at not to exceed $1800.00 per annum." You will like-

wise notice that the only difference in this bill recommended and that *and that* of bill 4032 referred to in the resolutions of the Southern branch of Feb. 26, is that the appointments are made by the President instead of by the Surgeon General of the Navy with the approval of the Secretary, and that it does not provide for a board of examiners and supervisors; otherwise this recommendation is the same word for word, as that of Senate bill 4032. It is evident Dr. Crossland as well as the dentists of the Southern branch, did not and do not grasp the true status of Senate bill 4032 and its companion H. R. 11,523, which you introduced in the House of Representatives Feb. 1, 1904. That the bills referred to 4032 and 11,523 give rank and pay and equal status with the medical corps in the navy cannot be questioned, as the above quotation from the letter of the honorable Secretary of the Navy plainly shows. So far as I have
45 knowledge and information, there has never been incorporated in to the army or navy service an entire corps (new) fully officered with graded rank. The medical corps of the navy was incorporated under a much lower status than that now proposed for the dental corps in the latest recommendation of the Secretary of the Navy, March 3, 1904. With these facts before us it would be unreasonable to think that the dental profession would have any reason to claim more consideration than has been granted them by the Navy Department in case this bill should become a law. Again quoting from the letter of the honorable Secretary of the Navy of March 3.

"Acting assistant surgeons, of whom 25 are authorized by act of May 4, 1898, (30 Stat. 380) to be appointed by the President for temporary service, have the rank of assistant surgeons, and to receive the pay provided for the lat-er by section 1556 of the Revised Statutes, namely; during the first five years after date of appointment, when at sea $1700, on shore duty $1400, on leave or waiting orders $1000, after five years from such date when at sea, $1900, on shore duty $1600, on leave or waiting orders $1200."

(Signed) W. H. MOODY, *Secretary.*

My information in regard to the pay is, that the acting assistant surgeons are and the dental surgeons would be assigned and attached to a receiving ship or other vessel at the navy yard where they are to be stationed, and in this case, they receive the pay allowed when at sea. With the above facts placed before the officers and members of the Southern branch of the National Dental Association, I have no doubt they will give the measure advocated by
46 the honorable Secretary of the Navy, a most hearty approval, as is being done at the present time by other dental associations throughout the country. In regard to the bill advocated in the resolution of the 24 instant, this bill received its final quietus through the efforts of Dr. Williams Donnally to force the amendment or bill as a new paragraph to the naval appropriation bill in the House of Representatives Feb. 26, 1904, over the heads

of the House Committee on Naval Affairs, which action I append by clipping from the Congressional Record of above date, which speaks for itself. I suggest that you send a copy of this letter to Dr. Crossland.

Very respectfully submitted,
(Signed) EMORY A. BRYANT, D. D. S.

Copy.

Address reply to the Secretary of the Navy, and refer to No. 1164—04.

NAVY DEPARTMENT,
WASHINGTON, *February* 8, 1904.

SIR: Receipt is acknowledged, by your reference of the 3rd instant for report, of a copy of bill (S. 4032) authorizing the establishment and organization of a corps of dentists in the navy.

The views of the department with respect to the employment of dental surgeons in the navy are briefly set forth in its letter to the committee on the 26th of January last making report upon Senate bill No. 3513 of the present section. The measure suggested
47 in that communication is regarded as preferable to the bill under consideration and its substitution for the latter is accordingly recommended.

Very respectfully, W. H. MOODY, *Secretary*.
S. C. L.

Hon. Eugene Hale, chairman Committee on Naval Affairs, United States Senate.

48 *Demurrer to Answer.*

Filed June 5, 1905.

In the Supreme Court of the District of Columbia, Holding a Probate Court.

EMORY A. BRYANT
vs.
THE DISTRICT OF COLUMBIA DENTAL SOCIETY. } No. 46975. At Law.

Comes now the petitioner, Emory A. Bryant, by his counsel, and demurs to the answer and return of the defendant herein and says that the same is bad in substance for the reasons following, to wit:

1. That the grounds for the alleged expulsion of the said petitioner set out in the answer to the sixth, seventh and eighth paragraphs of the petition are not such as under article III of the by-laws of the said defendant authorized the expulsion of the petitioner.

2. That in and by the said answer to the sixth, seventh and eighth paragraphs of said petition it affirmatively appears that the petitioner

was not accorded a hearing by the defendant within the meaning of the said article III of said by-laws of said defendant, in that it thereby appears that the said defendant refused to permit the alleged evidence upon which its committee reported the charges against said petitioner to be sustained to be submitted to and considered by said defendant society.

And the petitioner prays judgment against said defendant and that the peremptory writ of mandamus may issue against it
49 as prayed in the petition.

IRVING WILLIAMSON,
WM. G. JOHNSON,
Counsel for Petitioner.

Supreme Court of the District of Columbia.

FRIDAY, *June 30th*, 1905.

Session resumed pursuant to adjournment, Hon. Ashley M. Gould, associate justice, presiding.

EMORY A. BRYANT, Petitioner,
vs.
THE DISTRICT OF COLUMBIA DENTAL SOCIETY, Respondent.
} No. 46975. At Law.

Upon consideration of the demurrer herein filed to the answer of respondent to the petition herein, it is ordered that said demurrer be, and is hereby overruled with leave to plead over within twenty days.

* * * * * * *

WEDNESDAY, *July 19th*, 1905.

Session resumed pursuant to adjournment, Hon. Dan. Thew Wright, presiding.

EMORY A. BRYANT, Plaintiff,
vs.
THE DISTRICT OF COLUMBIA DENTAL SOCIETY, Defendant.
} No. 46975. At Law.

Ordered: That the time within which the plaintiff is to
50 plead over herein, be and the same is hereby further extended to and including August 10th, 1905.

Election to Stand on Demurrer.

Filed August 9, 1905.

In the Supreme Court of the District of Columbia.

EMORY A. BRYANT
vs.
DISTRICT OF COLUMBIA DENTAL SOCIETY. } At Law. No. 46975.

Comes now, petitioner, Emory A. Bryant, by his counsel, and elects not to plead further to the return herein, but to stand upon his demurrer to said return heretofore filed in the cause.

IRVING WILLIAMSON,
WM. G. JOHNSON,
Counsel for Petitioner.

Order Dismissing Petition, Appeal, &c.

Filed August 9, 1905.

In the Supreme Court of the District of Columbia.

EMORY A. BRYANT
vs.
DISTRICT OF COLUMBIA DENTAL SOCIETY. } At Law. No. 46975.

51 Upon consideration of the order heretofore made in this cause on the 19th day of July, 1905, over-ruling the demurrer of the petitioner herein, and it appearing to the court that the said petitioner has elected not further to plead to the return herein as allowed by the said order overruling said demurrer, it is this 9th August, 1905, by the court here, now considered and adjudged that the prayer of the said petition be denied and the said petition be dismissed with the costs, and from this order the said petitioner appeals in open court to the Court of Appeals, and it is further ordered that the petitioner be, and he is hereby permitted to deposit with the clerk of this court, the sum of $50.00 as security for costs on said appeal in lieu of a bond.

JOB BARNARD, *Justice.*

Memorandum.

August 9, 1905.—$50. deposited by petitioner in lieu of appeal bond.

52 *Order for Transcript of Record.*

Filed August 9, 1905.

In the Supreme Court of the District of Columbia, the 9th Day of August, 1905.

EMORY A. BRYANT
vs.
DISTRICT OF COLUMBIA DENTAL SOCIETY. } At Law. No. 46975.

The clerk of said court will please prepare transcript of record in this case containing following papers:
Petition & affidavit.
Rule to show cause.
Answers & exhibits.
Demurrer to answer.
Orders overruling demurrer & extending time.
Election to stand on demurrer.
Final order & appeal.

IRVING WILLIAMSON,
WM. G. JOHNSON,
Attorneys for Plaintiff.

53 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia,* } *ss*:

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 52, inclusive, to be a true and correct transcript of the record, as per directions of counsel herein filed, copy of which is made a part of this transcript, in cause No. 46,975 at law, wherein Emory A. Bryant, is complainant, and The District of Columbia Dental Society, is defendant, as the same remains upon the files and of record in said court.

Seal Supreme Court of the District of Columbia.

In testimony whereof, I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 13″ day of September, A. D. 1905.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1609. Emory A. Bryant, appellant, *vs.* The District of Columbia Dental Society. Court of Appeals, District of Columbia. Filed Sep. 18, 1905. Henry W. Hodges, clerk.

In the Court of Appeals

OF THE DISTRICT OF COLUMBIA.

OCTOBER TERM, 1905.

No. 1609—No. 21, Special Calendar.

EMORY A. BRYANT, APPELLANT,

vs.

THE DISTRICT OF COLUMBIA DENTAL SOCIETY,
APPELLEE.

BRIEF FOR APPELLANT.

IRVING WILLIAMSON,
WM. G. JOHNSON,
Counsel for Appellant.

LAW REPORTER PRINTING CO. WASHINGTON, D. C.

In the Court of Appeals

OF THE DISTRICT OF COLUMBIA.

OCTOBER TERM, 1905.

No. 1609—No. 21, Special Calendar.

EMORY A. BRYANT, APPELLANT,

vs.

THE DISTRICT OF COLUMBIA DENTAL SOCIETY, APPELLEE.

BRIEF FOR APPELLANT.

This is an appeal from an order of the court below denying the relief prayed and dismissing the petition of appellant in a proceeding for mandamus (Rec. p. 29).

Statement of the Case.

The appellant, a dentist and practitioner of dentistry in the District of Columbia filed his petition in the court below against the District of Columbia Dental Society, a corporation, under the laws of the United States, in the District of Columbia, praying for a writ of mandamus to compel the appellee to restore the appellant to his membership in said corporation, from which he claims to have been unlawfully expelled (Rec. pp. 1–5).

A rule to show cause why the writ should not issue as prayed was duly passed (Rec. p. 6), and the appellee appeared and answered the petition (Rec. pp. 6–27). Appellant demurred to this answer for the reasons that (1)

the grounds for expulsion set out in the return were not such as under the by-laws of the corporation authorized expulsion, and that (2) the answer affirmatively showed that the petitioner was not accorded a hearing because the defendant refused to permit the evidence upon which the alleged expulsion was based to be submitted to the society (Rec. pp. 27–28).

This demurrer was overruled by the court (Mr. Justice Gould), with leave to plead over within twenty days (Rec. p. 28). Subsequently the appellant elected not to plead further to the answer and return of the defendant, but to stand upon his demurrer, and thereupon the court passed an order denying the relief prayed in the petition and dismissing the petition (Rec. p. 29).

The only authority in the corporation to expel a member found in the record and the only authority claimed by the defendant in its answer is section 1 of article 3 of the by-laws of defendant, which is in the following terms:

> "Any act of special immorality or unprofessional conduct alleged to have been committed by a member shall be referred to a special committee of three, who shall examine into the case and report at the next regular meeting.
>
> "Whereupon, if the charge has been sustained, the offending member may, by a vote of two-thirds, be reprimanded or expelled, provided the accused shall have an opportunity for defense before final action is taken on his case" (Rec. p. 13).

The answer alleges that charges were preferred against petitioner as follows:

> "WASHINGTON, D. C., *March 15, 1904.*
>
> We, the undersigned, do hereby charge Dr. Emory A. Bryant, a member of this society, with the following acts of unprofessional and unethical conduct:

1st. Under date of March 10th, 1904, he wrote the Commissioners of the District of Columbia, charging the board of examiners, every member of which is a member of this society, with unprofessional and unethical conduct, false to the oath taken by them and to the profession they represent, and insinuates that they have issued a circular letter at variance with truth and honesty.

2d. That he interfered with the work of a regular committee appointed by this society on legislation.

3d. That in the evening of February 19th, at an adjourned meeting of this society, he said that the members of this society were too small cattle for him to deal with, and before taking his seat characterized the members as being a lot of cats.

4th. That he has been a disturbing element in this society for the past twelve months.

(Signed) JNO. H. LONDON.
C. W. APPLER.
M. F. FINLEY.
W. E. DIEFFENDERFER."

(Rec. p. 8.)

"It is hereby alleged that the accompanying letters written and signed by Dr. Emory A. Bryant, a member of this society, evidence unprofessional conduct on the part of the said Bryant, in this, that the said letters are (*a*) false in a number of material statements (*b*) that they are vicious in tone (*c*) that they disclose a mischievous and unnaturally antagonistic and evil purpose (*d*) that they contain threats to carry on a contention by him, the said Bryant, which is discreditable to the dental profession, dishonoring to the Nat. D. Asso. and degrading to this society, and which contention, if further pursued in the spirit and manner adopted by the said Bryant, is calculated to embarrass, discredit and defeat express worthy objects of the profession.

In connection with this alleged unprofessional conduct of Dr. Emory Bryant, your attention is

invited to the first ten lines of article 3, section 1 of your by-laws.

(Signed) M. F. FINLEY.
WMS. DONNALLY.
D. N. RUST.
H. M. SCHOOLEY."

(Rec. pp. 9–10.)

The defendant, in its answer, further alleges that—

> "The charges designated 1 and 2 preferred against the petitioner by Drs. London, Appler, Finley, and Dieffenderfer were founded upon a letter written by the petitioner and addressed to the Commissioners of the District of Columbia . . . and upon said letters [sic] the said charges were sustained. That the charges made by Drs. Finley, Donnally, Rust, and Schooley, hereinbefore referred to, were based entirely upon the letters, copies of which are hereto attached as exhibits 2, 3, 4, 5, 6, and 7. . . . That upon said evidence, being said letters, . . . all of the charges . . . made by Drs. Finley, Donally, Rust, and Schooley were sustained" (Rec. pp. 14–15).

The answer also alleges that these letters formed specifications under the charges respectively (Rec. pp. 8, 10), and that their authorship was admitted by the petitioner.

These facts were, of course, admitted by the demurrer and are freely admitted here, no denial of their authorship ever having been made by Dr. Bryant. The answer further alleges that the president of the defendant proceeded—

> "to appoint a special committee of three, in accordance with section 1 [of the by-laws], to examine into the case and report its findings at the next regular meeting" (Rec. p. 13)—

and appointed Drs. Wiber, Bates, and Sharp as such committee (Rec. p. 13). The answer further alleges that

the committee proceeded with its work, adopted a mode of procedure to which petitioner made no objection, and that—

> "copies of the charges and specifications and of all statements made in support thereof were furnished to the petitioner, and that he replied to the same in writing, submitting two voluminous statements and many documents in defence to said charges; that petitioner admitted the authorship of the letters hereinbefore referred to, and set forth as exhibits; that petitioner, having been given full and ample opportunity to make his defence, and having availed himself of the same, and having entered no objection to the method and mode of investigation pursued by the committee, the committee thereupon proceeded to consider said charges separately and took a separate ballot as to each charge, which said balloting resulted after the consideration of the evidence taken in support or defence of each charge, in the committee unanimously finding every charge made sustained, with the single exception of charge designated as charge 4; that on the 19th day of April, 1904, at the next stated meeting of the defendant corporation, at which the petitioner was present, and in which he participated, the aforesaid committee made its report, its chairman having first read in open meeting the charges which had been preferred against the petitioner as aforesaid, the report of said committee as follows, to-wit:
>
> We, your committee appointed to investigate the charges and allegations preferred against Dr. Emory A. Bryant, an active member of this society, beg leave to report that we have carefully considered the charges and allegations, and the answers thereto, and after due consideration, submit the following as our finding, to wit:
>
> In regard to the charges preferred by Drs. London, Appler, Finley and Donnally, charges 1, 2, and 3 are sustained—charge 4 is not sustained. In regard to the allegations signed by Drs.

Finley, Donnally, Rust, and Schooley, we find that allegations marked *a*, *b*, *c*, and *d* are all sustained.

Respectfully submitted,

(Signed) GEO. M. SHARP,
ROBT. A. BATES,
D. E. WIBER,
Committee."

(Rec. pp. 13–14.)

The report of the committee having been thus presented, the answer further alleges that—

"Thereupon it was moved and seconded that the report of the committee be received and adopted, which motion was duly carried; thereupon Dr. M. F. Finley moved that the petitioner, Dr. Emory A. Bryant, be expelled from the society known as the District of Columbia Dental Society, which motion was duly seconded by Dr. D. M. Rust; thereupon a motion was made by Dr. Walton and seconded by Dr. Smithe that all the evidence in the case be submitted, which motion was defeated; thereupon Dr. Bryant requested fifteen minutes within which to make a statement or defence before the society, and on motion was accorded double the time he asked, which time he occupied largely in personal attacks upon members of the defendant corporation. Thereupon the motion of Dr. M. F. Finley that Dr. Bryant be expelled from the society was duly put, and the chair ordered the vote to be taken by roll-call, which was done, said vote resulting in the motion of Dr. Finley being carried by a vote of thirty-nine to fifteen" (Rec. p. 14).

Assignment of Errors.

1. The court erred in dismissing the petition.

2. The court erred in not granting the peremptory writ of mandamus.

3. The court erred in not sustaining the petetioners demurrer—

(*a*) Because the acts alleged against him were not within the provisions of the by-laws.

(*b*) Because the alleged evidence of violation of the by-laws was not submitted to his triors, the society.

ARGUMENT.

The defendant corporation is an association of dentists, organized, primarily, as it charter declares, "for the advancement of the *dental profession*" (Rec. p. 17), and the petitioner is a dentist engaged in the practice of that profession. The relation of that society to that profession, and the effect of its expulsion of the petitioner upon a charge of "unprofessional conduct," are stated in the answer, thus:

> "The defendant admits that the connection of the petitioner with the defendant, as one of its members, was an element in the estimation of the public in determining his *standing in the dental profession*, and that the petitioner could not be deprived thereof without *serious injury to his professional standing*, both in the District of Columbia and throughout the country" (Rec. p. 7).

This controversy therefore presents none of the features which apply to the case of an ordinary social organization or club, but is one of gravity and importance, and affects the petitioner in the practice of his profession, his means of earning a living by his own industry, entirely outside of the precincts and membership of the corporation and without any reference to any internal privileges and advantages accruing to members of the society within the society itself; and it is in the necessary defense of his professional reputation and standing alone that this proceeding is prosecuted. In this connection it is claimed that the petitioner did no

act which could, in law, justify proceedings against him for expulsion, and that such proceedings as were had were unlawful and void, because his triors were not permitted to know the evidence upon which the charges were based.

I.

The Defendant Had No Lawful Right to Expel the Petitioner for the Causes Set Out in the Return and Answer.

It is not necessary to consider whether the society has, independently of any by-law, the power to expel one of its members, for the reasons presented by this record, or for any others, because it is admitted in the answer that it was under section 1 of article 3 of the by-laws that—

> "the charges against said petitioner were preferred, and under and by virtue of which he was expelled" (Rec. p. 15).

That by-law is limited in its scope and restricts the right of expulsion to "any act of special immorality or unprofessional conduct" (Rec. pp. 2, 13).

There is no pretense that Dr. Bryant was ever guilty of any act of immorality, "special" or otherwise, or that any charge of that nature was preferred against him. Two charges were preferred against him, and it is submitted that the record shows conclusively that neither fell within the scope of the by-law.

(*a*) The First Charge.

The first of these charges is thus formulated by his acccusers:

> "We, the undersigned, do hereby charge Dr. Emory A. Bryant, a member of this society, with the following acts of unprofessional an unethical conduct" (Rec. p. 8).

Before proceeding to the consideration of the four specifications under this charge and the single item of evidence which the record discloses in its support, it is submitted that the charge itself is one of which the society had no jurisdiction under the by-laws.

It accuses the petitioner of "acts of unprofessional *and unethical* conduct." It is impossible to determine from the record what his accusers meant by "*unethical*" conduct, or which of the four specifications they considered "unprofessional" and which "unethical," but certain it is, that the by-law does not specify as a cause for expulsion "unethical" conduct, whatever his accusers may have meant by that charge. He stood, therfore, charged, in the conjunctive, with acts forbidden and acts not forbidden. The finding of the committee with respect to this charge is that "the charges preferred by Drs. London, Appler, Finley, and Donnally, charges 1, 2, and 3, are sustained" (Rec. p. 14).

They do not find the main charge of "unprofessional and unethical conduct" sustained, but the specifications 1, 2, and 3 thereunder, and whether these are found to be "unprofessional" or "unethical" is left to the imagination.

This alone, it is submitted, is sufficient to vitiate any action by the society upon this charge. The charge, the specifications, and the finding of the committee are all indistinguishable and are not referable to the by-law, because it is impossible to determine whether they relate to conduct within the prohibition of the by-law or to conduct not within the by-law.

It needs no argument to sustain the proposition that when members of a corporate body enact a by-law by which they consent to expulsion in the event of "unprofessional conduct," they do not thereby empower the corporation to expel them for what a committee might conceive to be "unethical conduct." The terms are not

interchangeable and the tests and standards are entirely dissimilar.

Assuming for the purposes of the argument that this charge was sufficient in form, to authorize proceedings for expulsion, it is submitted that the specifications under it and the only evidence in its support do not fall within the description of "unprofessional conduct," within the meaning of the by-law and that no offense against the by-law was shown or charged. It will be observed that under this charge there are four specifications, viz:

(1) That he wrote a certain letter to the Commissioners of the District.

(2) That he interfered with the work of a regular committee of the society on legislation.

(3) That he used disrespectful and offensive language at a meeting of the society.

(4) That he has been a disturbing element in the society (Rec. p. 8).

The fourth specification can be disregarded because as to that the committee exonerated him and found the charge not sustained (Rec. p. 14).

The third specification, that he used disrespectful and offensive language at a meeting of the society, must also be disregarded, because it is nowhere alleged in the record, beyond the allegation in the charge itself, that he did use the language attributed to him, and no evidence in support of it appears anywhere in the record.

The first and second specifications are the only ones as to which the record discloses any evidence, and as to those the answer avers that they "*were founded upon a letter written by petitioner and addressed to the Commissioners of the District of Columbia*" (Rec. pp. 14–15). This letter is set out in full in the answer (Rec. pp. 8–9).

Does that letter constitute an act of "unprofessional

conduct" within the meaning of the by-law? It is submitted that it does not.

What is "unprofessional conduct?" The term has no fixed meaning in the law and its significance in this case must be determined by the ordinary meaning of the words and the particular relation in which they are used.

The Century Dictionary thus defines the word "unprofessional:"

> "Unprofessional. . . . 3. Not befitting a certain profession or a member of a profession; not in keeping with the rules of a certain profession; as *unprofessional conduct.*"

Unprofessional conduct as a term would vary in meaning according to the profession in which the accused party was engaged. Clergymen, physicians, dentists, lawyers, artists, architects, and civil engineers are all classed as professional men, yet the standards of conduct are essentially different in all.

The use of profane or indecent language by a clergyman would be conceded by all to be "unprofessional conduct," justifying his expulsion from the pulpit, and while it would be vulgar or immoral, according to circumstances, in any person, no one would pretend that it could be characterized as "unprofessional conduct" in a person belonging to the other professions mentioned.

It is submitted that conduct, to be legally characterized as "unprofessional conduct," must be conduct having some direct relation to the technical calling or profession which the accused pursues, and not merely conduct which may be open to criticism in any person without reference to his calling or profession.

To admit that any objectionable conduct which an investigating committee might choose to consider as "unprofessional" would justify expulsion of a member from

a corporate body, would be to destroy the restriction placed upon the power by the corporate statute and to substitute the *opinion* of the committee in each case for the law.

In the fourth paragraph of the answer it is admitted that petitioner's membership in this defendant "was an element *in the estimation of the public* in determining *his standing in the dental profession*" (Rec. p. 7), and it is also admitted that he could not be expelled "*without serious injury to his professional standing*, both in the District of Columbia and throughout the country" (Rec. p. 7).

This plainly shows what was meant by "unprofessional conduct;" it shows that membership in the society was a guaranty *to the public* that in his *profession* as a *dentist* a member of the corporation would properly conduct himself and that he possessed the requisite skill and character to be entrusted by the public with dental work, while expulsion from the society for "unprofessional conduct" amounts to a representation that he is unworthy to be entrusted with dental employment.

The only pretense of "unprofessional conduct" under this first charge is that he wrote the letter to the Commissioners set out in the record (Rec. pp. 8–9), for, as above shown, it is alleged in the answer that specifications 1 and 2 under this charge are "founded upon" this letter (Rec. pp. 14–15).

It is a letter to the Commissioners of the District, in their public, official capacity, criticising a circular issued by the Board of Dental Examiners, and suggesting that the Commissioners direct the board to withdraw the circular.

The Board of Dental Examiners was created by the act of Congress approved June 6, 1892 (27 U. S. Stat. pp. 42–3), and the persons composing it are appointed by the

District Commissioners, to whom they are made subordinate. The Board of Dental Examiners is, therefore, an integral part of the District government, created by act of Congress and not by the dental society, and having certain public duties to perform prescribed by the act of Congress, and, it is submitted, is as legitimate a subject of criticism for its official acts in this country as any other branch of the Government's service. By the act of Congress approved February 5, 1904, section 3 of the original act was amended by striking out the proviso in that section and substituting the following:

> "*Provided*, That the Board of Dental Examiners may issue a license to practice to *any dentist* who shall have been in legal practice for a period of *five years* or more, upon the certificate of the Board of Dental Examiners of the State or Territory in which he practiced, certifying his *competency and moral character*, and upon the payment of the certification fee, without examination as to his qualifications" (33 U. S. Stat. p. 10).

The manifest purpose of Congress, which alone can legislate for this District, which is the nation's capital, under national sovereignty, and not under the local sovereignty of any particular State, was to regulate by Congressional enactment the conditions upon which citizens of all the States and Territories should be granted or refused the privilege of practicing dentistry within the nation's capital.

It appears that the Board of Dental Examiners of the District, the creature of Congress, was dissatisfied with the work of its creator, and assumed the right to criticise the acts of Congress, one of the co-ordinate branches of the national Government and the supreme legislative authority here, and without the slightest idea of being

guilty of "unprofessional conduct." This criticism is embodied in the following circular:

> "*Board of Dental Examiners for the District of Columbia.*
>
> OFFICE OF THE SEC'T, COLO. BUILDING,
> WASHINGTON, D. C.
>
> GENTLEMEN: Please find appended a copy of the Stockton resolution, with which we are in hearty accord. We are ready to take up the reciprocal feature with you, but in view of *the defect in our law, just passed, it not being in full accord with the said resolution*, we request that your board *do not issue certificates* to persons unless they are reputable *in addition* to their complying with the competency, moral character, and five year clauses.
>
> Stockton resolution appended.
>
> (Signed) W. E. DIEFFENDERFER, *Sec.*"
>
> (Rec. p. 8).

Congress, in the exercise of its supreme power to open the nation's capital to the dentists of all the States and Territories, saw fit to impose but three conditions, competency, five years' practice, and moral character, but the Board of Dental Examiners sought to amend this act of Congress, indirectly, by suggesting to the boards of the States that they defy the act of Congress and "do not issue certificates" to persons qualified under the act of Congress, "unless" "*in addition* to their complying" with the act of Congress, "they are reputable." Just what the Board of Dental Examiners meant by "reputable" as distinguished from competent and of moral character is not explained in the circular, but they plainly do mean something different and "*in addition*" to the requirements fixed by Congress.

Surely, if the Board of Dental Examiners, created by act of Congress, holding office under it and having the duty to obey the act, could criticise the legislation of

Congress, and in a circular to Boards of Dental Examiners in other States counsel the evasion of the act of Congress that they might themselves thereby violate it, and yet not be guilty of "unprofessional conduct," the petitioner could criticise their conduct in an official communication to their superior officers, the Commissioners of the District, responsible for their faithful obedience to the law without being guilty of "unprofessional conduct," which is all that Dr. Bryant's letter does. The letter is printed in full in the record (Rec. pp. 8–9), and it is submitted that while opinions may differ as to its temper and taste, the court will not find in it a sentence or expression which can legally be characterized as "unprofessional conduct" or which can legally justify his being professionally pilloried, disgraced, and ruined in business.

That neither his accusers nor the committee appreciated the restricted scope of the by-law or felt themselves bound by the term "unprofessional conduct" is evident from two of the specifications in this first charge, viz:

> "2d. That he interfered with the work of a regular committee appointed by this society on legislation."
>
> . . . . . .
>
> "4th. That he has been a disturbing element in this society for the past twelve months" (Rec. p. 8).

That any one would contend that interfering with the work of a committee on legislation, or being a disturbing element in the society could be characterized as "unprofessional conduct" is not to be expected. Those acts are as foreign to the dental profession as any act that could be imagined; yet, so he was formally charged and the committee solemnly considered and reported upon these specifications (Rec. p. 14).

(*b*) The Second Charge.

The second charge against petitioner is thus formulated:

> "It is hereby alleged that the accompanying letters written and signed by Dr. Emory A. Bryant, a member of this society, evidence unprofessional conduct on the part of said Bryant," etc. (Rec. p. 9).

This charge is made by Drs. Finley, Donnally, Rust, and Schooley (Rec. pp. 9–10), and with respect to it the answer of the defendant says:

> "That the charges made by Drs. Finley, Donnally, Rust, and Schooley, hereinbefore referred to, were based entirely upon the letters, copies of which are hereto attached as exhibits 2, 3, 4, 5, 6, and 7" (Rec. p. 15).

To determine, therefore, whether there was any legal justification for charging Dr. Bryant with "unprofessional conduct" within the meaning of the by-laws, the court is not called upon to look beyond the letters themselves. They are printed in full in the record (Rec. pp. 18–27).

An examination of this correspondence will show at once that it had no relation to the practice of dentistry here or elsewhere; no relation to the District of Columbia Dental Society; no relation to the profession of dentistry; no connection with the professional relations or association of any of the parties with each other in the practice of dentistry. It concerns wholly and entirely proposed legislation by the Congress of the United States with respect to dental service in the United States Navy. It appears from these letters that different measures had been proposed, and that the naval committees of the House and Senate, and the Secretary of the Navy were giving the matter consideration. That Dr. Bryant was favoring the passage of one bill and Dr.

Donnally and others were favoring another bill, and there was a wide divergence of opinion as to the relative merits of the two measures. While, as is not unusual in such cases, feeling developed and some acrimonious and excited expressions are employed, yet nothing touching the practice of dentistry and nothing assailing the professional character of his opponents is found in the letters.

The controversy seems to have turned mostly on the question of the rank to be given to dentists in the naval service, in which Dr. Bryant's opponents appear to advocate a measure designed to give to dentists in the Navy a higher rank than appears to have been contemplated in the measure advocated by Dr. Bryant.

Whatever view may be taken of the merits of the controversy, it is clear that the subject-matter was *political* relating exclusively to legislation by Congress concerning the Navy, and neither the practice of dentistry, the professional relations of dentists to their patients or each other, or the professional conduct of any of the parties was in anywise involved. Indeed, it is obvious that in this matter all the parties were acting in their independent personal characters as men and citizens, and were "in politics," so to speak, and the fact that they were also, when at home attending to their proper business, all dentists, was a mere coincidence, in no respect essential to the matter, and the seamen, marines, and officers of the naval service, whose interests were in some measure involved, could with equal propriety have taken part in the discussion and could doubtless have added interest and gaiety to the occasion.

It is respectfully submitted that an examination of the correspondence, which is the sole ground of the charges of "unprofessional conduct" against the petitioner, will satisfy the court that no question of "professional" conduct is involved; that the whole controversy can properly

be styled "a tempest in a tea pot," and that the petitioner's adversaries, through personal sentiment and anger, sought to use the power of expulsion in the society to gratify that resentment. This was accomplished, as will be shown, *infra*, by a second violation of the by-laws, by means of which the *facts*, upon which the petitioner was held guilty of violating the by-laws were unlawfully withheld from the members of the corporation by whose vote alone he could be expelled.

II.

The Petitioner Was Denied the Hearing Upon the Evidence Provided in the By-Law.

The by-law, under which petitioner was expelled, is, as set up in defendant's answer, in the terms following:

> "Any act of special immorality or unprofessional conduct alleged to have been committed by a member shall be referred to a special committee of three, who shall examine into the case and report at the next regular meeting.
>
> "Whereupon, if the charge has been sustained, the offending member may, by a vote of two-thirds, be reprimanded or expelled, *provided the accused shall have an opportunity for defense before final action is taken on his case*" (Rec. p. 13).

From the foregoing it is seen that the power of expulsion resides in the members of the corporation by a vote of two-thirds; that the members alone can exercise the power of expulsion, and before such action is taken the accused "shall have an opportunity for *defense.*"

The report of the committee is not made binding upon either the accused or the society and the action of the committee is purely *ex parte.* They are merely authorized to "examine into the case and report." The by-law gives the accused no right to appear and make defense

before the committee, nor is the accused even entitled, under the by-law, to notice of the charges. So far as the by-law provides the charges may lawfully be made, referred to the committee, and reported before the accused has any knowledge of them.

In this case it is, of course, admitted that petitioner did, in fact, have notice of the charges, of the appointment of the committee, of the evidence submitted to them, and an opportunity to make defense before the committee, of which he availed himself, and he also had notice of their report.

But this was mere matter of grace and favor, is not provided for in the by-law, and could not be demanded as matter of right. The only *right* given by the by-law is the "opportunity for defense" before the society "before final action is taken on his case." The action of the committee under the by-law is therefore like that of a grand jury, which inquires *ex parte*, reports the case as sustained, and the actual trial is by the corporation itself. The members then become his triors, and they alone can adjudge him guilty and impose sentence of reprimand or expulsion. It is to be observed that the right which is accorded the accused by the by-law is not the right to plead for mercy or in mitigation of sentence for an offense of which he stands convicted, but it is "an opportunity for *defense*," that is, an opportunity to deny his guilt and defend himself against the charge.

Whatever view may be taken of this by-law, it is indisputable that the accused has the right to make his "*defense*" before the corporation itself, and one of two consequences inevitably results from this right. Either the corporation sits as a court of first instance to try the question of guilt *vel non*, or it sits as a court of appeal to review the judgment of the committee.

In either view the defendant is entitled to have the

evidence before his triors, whether it be to determine *disputed questions of fact*, or to determine whether, as matter of *law*, admitted, established, or disputed facts involve a violation of the by-laws in the *first* instance, and in the *second* instance whether they are of such magnitude and so far devoid of palliation or excuse as to incur the greater penalty of *expulsion* or the lesser penalty of *reprimand*.

This right was demanded by petitioner at the trial and was denied him, as is admitted in express terms by the defendant's answer, and he was condemned and sentenced without the evidence being submitted to his triors and without opportunity to discuss it.

The crowning outrage in this case is found in three undisputed facts, distinctly admitted in the defendant's answer, namely :

1. That the evidence in the case for and against petitioner was in writing and in possession of the committee.

2. That, at the trial, demand was made in behalf of the accused that the evidence be submitted to the society, his triors.

3. That this demand was refused before petitioner entered upon his defense and he was compelled to proceed without it.

1. The evidence was in writing in the possession of the committee.

The answer of defendant avers as follows:

> "The said committee met and determined upon the method of procedure to investigate said charges, which required *that all allegations made in support thereof should be submitted in writing, that the petitioner should have a full and complete copy of the charges and specifications, and of all allegations in support thereof; . . . that copies of the charges and specifications and of all statements made in support thereof were furnished to the petitioner, and that he replied*

> *to the same in writing, submitting two voluminous statements and many documents in defense to said charges.* . . . The committee thereupon proceeded to consider said charges separately and took a separate ballot as to each charge, *which said balloting resulted after the consideration of the evidence taken in support or defense of each charge*, in the committee unanimously finding every charge made sustained, with the single èxception of charge designated as charge 4" (Rec. p. 13).

Here it is clearly admitted that all the proof offered for and against petitioner was reduced to writing and that the petitioner submitted "*two voluminous statements and many documents*" to the committee, and that their decision was reached after consideration of all this evidence.

That the evidence existed in form for submission to the triors of the accused is thus seen to be not a *question* in the case, but an undeniable fact. Part of it—that is, such as is supposed to make *against* petitioner—is before this court, in this record, as part of defendant's answer, but not one syllable of what was offered in petitioner's defense.

2 and 3. At the trial demand was made in behalf of accused that the evidence be submitted to his triors. This was denied before petitioner entered upon his defense, and he was compelled to proceed without it.

The answer further shows that on the 19th of April, 1904, at the next stated meeting of the defendant—

> "The aforesaid committee made its report, its chairman having first read in open meeting the charges which had been preferred against the petitioner as aforesaid" (Rec. p. 14).

Then follows the formal report of the committee, and the answer then proceeds to state in detail and in chro-

nological order as they occurred, the proceedings following the reading of the report, as follows:

> "Thereupon it was moved and seconded that the report of the committee be received and adopted, which motion was duly carried; thereupon Dr. M. F. Finley moved that the petitioner, Dr. Emory A. Bryant, be expelled from the society known as the District of Columbia Dental Society, which motion was duly seconded by Dr. D. M. Rust; *thereupon a motion was made by Dr. Walton and seconded by Dr. Smithe that all the evidence in the case be submitted, which motion was defeated;* thereupon Dr. Bryant requested fifteen minutes within which to make a statement or defense before the society, and on motion was accorded double the time he asked, which time he occupied largely in personal attacks upon members of the defendant corporation. Thereupon the motion of Dr. M. F. Finley that Dr. Bryant be expelled from the society was duly put, and the chair ordered the vote to be taken by roll call, which was done, said vote resulting in the motion of Dr. Finley being carried by a vote of thirty-nine to fifteen" (Rep. p. 14).

From the foregoing statement of defendant it appears that *immediately* upon the reading of the report it was adopted and a motion made for the expulsion of the petition and that pending that motion it was moved and seconded that the evidence be submitted, but that this motion was voted down and the defendant proceeded to make his defense without evidence.

At this supposed trial, the members of the corporation had to pass upon the guilt or innocence of the accused and to fix the penalty, yet they not only did not hear and consider the evidence, but refused to allow it to be heard and considered, though a motion was duly made and seconded to have the evidence submitted. The

finding of the committee was treated as binding and conclusive upon triors and tried, and the "opportunity for defense" given the petitioner was a mere sham since it refused him the right to use in his defense the only thing by which he could be defended. It would have been more reasonable to have heard the evidence and to have refused to hear the petitioner than to hear him, but refuse to hear his case.

A somewhat similar situation was presented in the case of People ex rel. Meads *vs.* McDonough et al., 8 N. Y. App. Div. 591. A by-law provided that a member might be expelled by a vote of a majority of the *officers*, on the recommendation of the members by majority vote. Charges were preferred against the relator and were referred to a committee, who took evidence and unanimously reported him guilty. The majority of the members then voted for expulsion without taking any testimony or hearing that taken by the committee.

Judge Vann, in his opinion affirming the judgment of the lower court, which had held the expulsion void and ordered the writ of mandamus to issue, makes these observations on the case.

Pages 596 and 597:

> "Where such serious results follow a deposition from membership those who allege regularity of procedure in the effort to expel must be held to strict proof, for no presumption will be indulged in to support a forfeiture, which the law abhors (1 Bacon, sec. 110; People *vs.* Medical Society, 32 N. Y. 187, 193; Pulford *vs.* Fire Department, 31 Mich. 458). The relator was entitled to a fair trial, after due notice, before an impartial tribunal, and as the method of procedure was not regulated by the laws of the association, it should be analogous to that observed in ordinary judicial proceedings, so far at least as to promote substantial justice (Wachtel *vs.* N. W. and O. Ben. Soc., 84 N. Y. 28; Roehler *vs.* Aid Soc., 22 Mich.

86). The only trial or opportunity for trial that he had was by committee, yet the by-laws authorize no such proceeding, and in the absence of a regulation to that effect the weight of authority requires trial by the body of the order.

"Mr. Bacon says: 'The power of expulsion of members of a society, club, or corporation, belongs to the body at large, and, in the absence of the clearest authority in the constitution and by-laws, can not be delegated to a committee or officer' (sec. 100). Many cases are cited by the learned author in support of this position, from one of which the following extract is taken: 'The transfer from the body of the society, where it properly belongs, to a small fraction of its members of so large and dangerous a power as that of expulsion, must appear, if it is claimed to exist, by the plainest language. It can not be established by inference or presumption, for no such presumption is to be made in derogation of the rights of the whole body, nor is it to be supposed, unless it appears by the most express and unambiguous language, that the members of the society have consented to hold their rights and membership by so frail a tenure as the judgment of a small portion of their own number. (Hassler *vs.* Phila. Mus. Assn., 14 Phila. 233)'".

Pages 597 and 598:

"There are respectable authorities which hold that where no mode of procedure for the conduct of a trial is specified, the society may adopt such mode as it pleases, subject only to the limitation that it must be fair, even including a trial by committee. (Spilman *vs.* Home Circle, 157 Mass. 128; Pitcher *vs.* Board of Trade, 13 N. E. Rep. 187.) I regard such practice as loose and dangerous and refuse to adopt it in the absence of a controlling authority in this State. It may well be that a corporation may delegate to a committee the power to take the evidence and report it to the

members, for them, duly assembled for the purpose, to act upon, but the trial itself and the decision of the issue should be by the whole and not by a small part. (Loubat *vs.* Le Roy, 40 Hun, 546.) The only trial of the relator was by a committee that not only took the evidence, but decided the facts, and, without reporting the evidence recommended expulsion. The association simply fixed the penalty by voting to expel without hearing the evidence. Yet, according to the by-laws, the power to expel had been confided to the officers, the members having power simply to recommend expulsion."

It is respectfully submitted that the several letters written by the petitioner and set out in the record and which are the sole foundation for his expulsion, do not constitute in law an act of "unprofessional conduct" within the meaning of the by-law, and that there was no lawful cause for the expulsion of the petitioner.

That in refusing to permit the evidence in the case to be submitted at the trial, the petitioner was denied an opportunity for defense within the meaning of the by-law, and the trial and expulsion were null and void.

It is further respectfully submitted that the judgment appealed fromshould be reversed and the cause remanded with instructions to enter an order sustaining the demurrer and directing the peremptory writ of mandamus to issue commanding the defendant to restore the petitioner to membership in the corporation.

IRVING WILLIAMSON,
WM. G. JOHNSON,
Counsel for Appellant.

Court of Appeals, District of Columbia

OCTOBER TERM, 1905.

No. 1609.

No. 21, SPECIAL CALENDAR.

EMORY A. BRYANT, APPELLANT,

vs.

THE DISTRICT OF COLUMBIA DENTAL SOCIETY.

BRIEF FOR APPELLEE.

CONRAD H. SYME,
C. A. DOUGLASS,
Attorneys for District of Columbia Dental Society.

IN THE

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

EMORY A. BRYANT, APPELLANT
vs.
THE DISTRICT OF COLUMBIA DENTAL SOCIETY. } No. 1609.

STATEMENT.

On the 10th day of January, 1899, The District of Columbia Dental Society was incorporated under the laws of the District of Columbia, its objects being *"the advancement of the dental profession and the promotion of social intercourse and kindly feeling among its members."* (R., p. 17.)

At a regular stated meeting of its members, held on the 15th day of March, 1904, in the City of Washington, charges were preferred against the appellant, Emory A. Bryant, one of its members, by seven members of this society, whose names were attached to the charges.

The charges were as follows (R., pp. 8-10):

WASHINGTON, D. C., *March* 15, 1904.

We, the undersigned, do hereby charge Dr. Emory A. Bryant, a member of the society, with the following acts of unprofessional and unethical conduct:

1st. Under date of March 10th, 1904, he wrote the Com-

missioners of the District of Columbia, charging the board of examiners, every member of which is a member of this society, with unprofessional and unethical conduct, false to the oath taken by them and to the profession they represent, and insinuates that they have issued a circular letter at variance with truth and honesty.

2d. That he interfered with the work of the regular committee appointed by this society on legislation.

3d. That in the evening of February 19th at an adjourned meeting of this society, he said that the members of this society were too small cattle for him to deal with, and before taking his seat characterized the members as being a lot of cats.

4th. That he has been a disturbing element in this society for the past twelve months.

(Signed) JNO. H. LONDON.
C. W. APPLER.
M. F. FINLEY.
W. E. DIEFFENDERFER.

March 14, 1904.

It is hereby alleged that the accompanying letters written and signed by Dr. Emory A. Bryant, a member of this society, evidence unprofessional conduct on the part of the said Bryant, in this, that the said letters are: (*a*) false in a number of material statements; (*b*) that they are vicious in tone; (*c*) that they disclose a mischievous and unnaturally antagonistic and evil purpose; (*d*) that they contain threats to carry on a contention by him, the said Bryant, which is discreditable to the dental profession, dishonoring to the National Dental Association and degrading to this society, and which contention, if further pursued in the spirit and manner adopted by the said Bryant, is calculated to embar-

rass, discredit and defeat express worthy objects of the profession.

In connection with this alleged unprofessional conduct of Dr. Emory Bryant, your attention is invited to the first ten lines of article 3, section 1 of your by-laws.

(Signed) M. F. FINLEY.
WMS. DONNALLY.
D. N. RUST.
H. M. SCHOOLEY.

Accompanying the charges were letters addressed by the appellant, Emory A. Bryant, to Dr. C. C. Chittenden, president of the National Dental Association; a letter to Dr. J. A. Libbey, dated February 7th, 1904, and a letter addressed by the appellant to Hon. George W. Taylor, dated March 14th, 1904, all of which letters were filed with the committee, together with specifications referring to the letters and indicating exactly wherein they were "false in material statements," "vicious in tone," "disclosing a mischievous and unnaturally antagonistic and evil purpose," and containing "threats to carry on a contention by the appellant discreditable to the dental profession, dishonoring to the National Dental Association, and degrading to the Society."

The specifications charging these letters as being "vicious in tone" set forth, *verbatim,* a number of statements taken from the letters, and used by Dr. Bryant, with reference to members of The District of Columbia Dental Society, and certain of their actions, among which were the following:

"I am the last one on earth to stop fighting the filth that has control in this locality."

"I once before told them that 'if it was politics they wanted, I would give them all they wanted, and a damn sight more, before I was through with them, and I kept my word.' "

"I just give you this tip, 'there will be hell to pay' before this thing ends." * * * "The black flag is up, and I have nailed her to the topmast; 'no quarter will be asked or will be given.' "

"Of all the damn fool moves," etc.

"A lie pure and simple."

There was also filed with the charges a certified copy of the letter of Dr. Bryant to the Commissioners of the District of Columbia, upon which the first charge was based, the charge being taken, almost *verbatim,* from the letter. (R., pp. 8 to 12.)

Section 1, of Article III, of the by-laws of the District of Columbia Dental Society is as follows, to-wit:

"Any act of special immorality or unprofessional conduct alleged to have been committed by a member shall be referred to a special committee of three, who shall examine into the case and report at the next regular meeting."

"Whereupon, if the charge has been sustained, the offending member may, by a vote of two-thirds, be reprimanded or expelled, provided the accused shall have an opportunity for defence before final action is taken on his case."

Upon presentation of these charges, the President proceeded to appoint a special committee of three, in accordance with section 1, to examine into the case and report its findings at the next regular meeting. The President named Drs. Wiber, Benson and Shafhirt. Dr. Bryant, the appellant, was present and objected to Drs. Benson and Schafhirt, whereupon the President withdrew their names, and appointed in their place Drs. Bates and Sharp, to which committee, as then constituted, the appellant made no objection whatever, stating that he was satisfied with its personnel. Thereupon the charges were read by the secretary of the society, and were, by the President, referred to the committee for consideration and report. Thereafter, and before the next regular meeting, which was set for April

19, 1904, the committee met and determined upon the method of procedure to investigate the charges, which required that all allegations made in support thereof should be submitted in writing; that the appellant should have a full and complete copy of the charges and specifications, and of all allegations in support thereof, and should be given ample opportunity to meet the same by counter-statements, and by such statements as he, himself, desired to make. The appellant raised no objection whatever to the mode of procedure and did not demand the right to have witnesses sworn or cross examined or to rule out testimony taken, but in all things acquiesced in the method of trial adopted by the committee. Copies of the charges and specifications and of all statements made in support thereof were furnished to the appellant, and he replied to the same in writing, submitting two voluminous statements and many documents in defence of himself. He admitted the authorship of the letters referred to. The appellant, having been given full and ample opportunity to make his defence, and having availed himself of the same, and having entered no objection to the method and mode of investigation pursued by the committee, the committee thereupon proceeded to consider the charges separately, taking a separate ballot as to each charge, which balloting resulted after the consideration of the evidence taken in support or defence of each charge, in the committee unanimously finding every charge made sustained, with the single exception of charge designated as Charge 4. On the 19th day of April, 1904, at the next stated meeting of the defendant corporation, at which the appellant was present, and in which he participated, the committee made its report, its chairman having first read in open meeting the charges which had been preferred against the petitioner. The report of the committee was as follows, to-wit:

We, your committee, appointed to investigate the charges

and allegations preferred against Dr. Emory A. Bryant, an active member of this society, beg leave to report that we have carefully considered the charges and allegations, and the answers thereto, and after due consideration, submit the following as our finding, to-wit:

In regard to the charges preferred by Drs. London, Appler, Finley, and Donnally, charges 1, 2, and 3 are sustained —charge 4 is not sustained.

In regard to the allegations signed by Drs. Finley, Donnally, Rust, and Schooley, we find that allegations marked, *a, b, c,* and *d,* are all sustained.

Respectfully submitted,

(Signed) GEO. M. SHARP,
ROBT. A. BATES,
D. E. WIBER, *Committee.*

Thereupon it was moved and seconded that the report of the committee be received and adopted, which motion was duly carried; thereupon Dr. M. F. Finley moved that the appellant, Dr. Emory A. Bryant, be expelled from the society, which motion was duly seconded by Dr. D. M. Rust. Thereupon a motion was made by Dr. Walton and seconded by Dr. Smith that all the evidence in the case be submitted, which motion was defeated; thereupon Dr. Bryant requested fifteen minutes within which to make a statement or defence before the society, and on motion was accorded double the time he asked, which time he occupied largely in personal attacks upon members of the defendant corporation. Thereupon the motion of Dr. M. F. Finley that Dr. Bryant be expelled from the society was duly put, and the chair ordered the vote to be taken by roll call, resulting in the motion of Dr. Finley being carried by a vote of thirty-nine to fifteen.

On May 31, 1904, the appellant filed, in the Supreme Court of the District of Columbia, his petition for a writ of mandamus, to restore him to membership, alleging that he was illegally expelled from the District of Columbia Dental Society. The rule to show cause why a writ of mandamus should not issue as prayed, was answered by the appellee, on the 17th day of June, 1904, in which the facts hereinbefore mentioned were set forth (R., pp. 8-14) Thereafter, on June 5, 1905, the appellant demurred to the answer of the appellee, stating as his grounds for demurrer the following:

> "1. That the grounds for the alleged expulsion of the said petitioner set out in the answer to the sixth, seventh, and eighth paragraphs of the petition are not such as under article three of the by-laws of the said defendant authorized the expulsion of the petitioner.
>
> "2. That in and by the said answer to the sixth, seventh, and eighth paragraphs of said petition it affirmatively appears that the petitioner was not accorded a hearing by the defendant within the meaning of the said article three of said by-laws of said defendant, in that it thereby appears that the said defendant refused to permit the alleged evidence upon which its committee reported the charges against said petitioner to be sustained, to be submitted to and considered by said defendant society." (R., pp. 27 and 28.)

The demurrer to the answer was heard by Mr. Justice Gould, who, on June 30, 1905, overruled the same. The appellant, on August 9, 1905, elected not to plead further to the answer, but to stand upon the demurrer thereto, upon which election, on the same day, an order was entered in the Supreme Court of the District of Columbia, that the prayer of the appellant's petition be denied, and that the petition be dismissed with the costs, and from this order the appellant has prosecuted his appeal to this court (R., pp. 28, 29).

The opinion of Mr. Justice Gould, in overruling the demurrer, was orally delivered and stenographically reported, and is as follows:

Opinion of Mr. Justice Gould.

"This is an application for a mandamus to reinstate Dr. Bryant in the District of Columbia Dental Society, and is based on two grounds. The first is that his conduct for which he was expelled was not such as to enable the society, under its by-laws, to expel him; and, secondly, that the procedure by which his expulsion was reached was not according to the by-laws.

The by-law that is called in question is section 1 of article 3:

> "Any act of special immorality or unprofessional conduct alleged to have been committed by a member shall be referred to a special committee of three who shall examine into the case and report at the next regular meeting. Whereupon, if the charge has been sustained, the offending member may, by a vote of two-thirds, be reprimanded or expelled, provided the accused shall have an opportunity for defense before final action is taken on his case."

Without going into any extended discussion of the charges against Dr. Bryant, they may be said to have consisted in a severe criticism or animadversion upon members of the society, especially upon the dental board, which was composed of members of the society, and the occasion of the criticism apparently was a divergent view as to proposed legislation affecting the practice of dentistry.

The contention of Dr. Bryant's counsel is that this severe criticism, and I think I may fairly say this abuse of his fellow members of the society, did not constitute unprofessional conduct.

The object of this association, as it appears from its constitution, is to elevate and sustain the professional character of its members, and to promote among them mutual improvement, social intercourse, and good feeling.

Now, the contention is that unprofessional conduct, as I understood the argument of his learned counsel, could only constitute any misconduct in the relations which existed between him and his patients; that is, in the conduct of his profession, and that it would not include abuse or accusations or epithets applied to his fellow members. Now, I cannot accede in that view. It seems to me that the term "unprofessional conduct," applied to a member of any profession, includes not only misconduct in relation to his clients or his patients, but also in his relations to his fellow members, particularly when the object of the association of which he is a volunteer member is partly to promote mutual good feeling and social intercourse.

Now, if I am correct in this, that the unprofessional conduct, which is a cause of expulsion at the will of the society —a majority of two-thirds of the society—consists in the abuse of the friendly relations that should exist between the members, then it comes within the scope of this by-law, and as the Court of Appeals has decided in Yturbide case, which follows the general decisions on that subject, it is not for the Court to inquire as to the degree of professional misconduct. If the by-laws furnish a definition or furnish a description of the offense in general terms, and the alleged offense comes within that description, it is not for the Court to say what degree the person who has been expelled has violated it—violated the by-laws. It is for the society. In other words, the offense coming within the scope of the by-law, it is then for the society to determine whether, in their opinion, it has reached the degree which they think would warrant the expulsion of a member. So that, on that point, I have no doubt that the misconduct of one member of this society toward another would be unprofessional conduct, and the subject—the exact definition of which would be for the members of the society.

On the second point, whether he was accorded the trial that is provided for in the by-law, I do not interpret this section in the same manner that his learned counsel has. It is rather peculiarly worded, and it is not free from ambiguity, but my interpretation of it is this: That when the charges have been preferred in proper manner against a member of the society, they shall be referred to a special

committee of three, who shall examine into the case and report at the next regular meeting. Now, that was done in this case. There is no question about it, as I understand or remember as to the sufficiency of the specifications of misconduct, and, so far as the matter of form went, they were referred to the committee of three, who did examine and who did report. "Whereupon," the by-law proceeds, "if the charge has been sustained, the offending member may, by a vote of two-thirds, be reprimanded or expelled." Now, I do not believe that that includes the rehearing by the whole society, that it is simply, as the language indicates, a report made by the committee to the society, upon which the society acts either affirmatively or negatively—either accepts it or rejects it—and a member of that society, in determining his conclusions as to that report, would have the right to call for the testimony upon which the committee based is report or would have the right to question the accuracy of the report, but that is a right which is for the members of the society before they vote upon the report. This man, the doctor, had had his hearing, had his notice, and an opportunity to be heard by the committee, and an opportunity to be heard in his defense before the association. But I do not read this as meaning that the association shall rehear the evidence upon which the committee's report was based. They have the right, as any legislative body has, to act upon the report of the committee which has been appointed according to the rules of the order—the society—and they can act with or without information. They can vote blindly, if they please, for it, or they can insist on further information, but it is for them to say whether they will accept or reject the report.

The doctor was accorded, as I have said, an opportunity to be heard both before the committee and before the society as a whole, and the return here negatives any malice or caprice or lack of *bona fide* in the action of the society, and, of course, the demurrer admits the allegations of the return.

So that we have a case where in good faith and without malice or caprice Dr. Bryant was expelled for violation of this by-law, in accordance, as I understand it, with the procedure that is laid down in the by-laws of the society.

As I have stated, it is not for this Court to pass upon the sufficiency of the charge against Dr. Bryant; to say that the Court, acting as the trier of his conduct, should have discharged him or not. He entered into this society and accepted its by-laws, and its mode of procedure to be the proper one to be administered in his case, or in any other man's case. I think, substantially, he was accorded a hearing in accordance with the provisions of the by-laws, which were binding upon him as any other member of the society.

I don't think it is a case where the Court should interfere with the action of this association, and, therefore, I will overrule the demurrer to the return."

ARGUMENT.

The demurrer to the answer admitted as true all the facts therein set forth, material, relevant, and well pleaded, and resort cannot be had to other pleadings for the purpose of supporting or resisting the demurrer, but the demurrer must prevail or fall by the face of the pleading to which it is directed. (Walden *v.* Craig, 14 Peters, 152.) Consequently, we must look alone to the legal sufficiency of the facts alleged in the answer to determine the question as to the legality of the expulsion of the appellant by the District of Columbia Dental Society.

The appellant's contention is that the grounds for his expulsion, set out in the answer to the sixth, seventh, and eighth paragraphs of the petition, were not such as, under article 111 of the by-laws of the defendant society, authorized his expulsion, and that, from the answer to the petition, it appears that the petitioner was not accorded a hearing by the defendant society within the meaning of article three of its by-laws, in that the defendant society refused to permit the evidence, upon which its committee reported the charges agaist the petitioner to be sustained, to be submitted to and considered by the defendant society.

The position of the District of Columbia Dental Society, appellee herein, is:

1. That Dr. Bryant was accorded the trial provided under section 1 of article 3 of its by-laws.

2. That the investigation by its committee, its findings, and report, and the action of the society thereupon, were in good faith, and in accordance with the by-laws.

3. That the District of Columbia Dental Society had the legal power to determine whether the acts charged, and of which the appellant was found guilty, were unprofessional and sufficiently grave to warrant his expulsion.

4. That the conduct of Dr. Bryant was grossly violative of his duty as a corporator and member of the District of Columbia Dental Society, and its action in expelling him will not be reviewed by the Courts.

Dr. Bryant was Accorded the Trial Provided under Section One of Article Three of its By-Laws.

Section one of article three of the by-laws of the appellee provides:

> "Any act of special immorality or unprofessional conduct alleged to have been committed by a member shall be referred to a special committee of three, who shall examine into the case and report at the next regular meeting."
>
> "Whereupon, if the charge has been sustained, the offending member may, by a vote of two-thirds, be reprimanded or expelled, provided the accused shall have an opportunity for defense before final action is taken on his case."

There can be no question that under this by-law it was the intention of the society to have any act of unprofessional

conduct alleged to have committed by a member, investigated, as to the facts, by a special committee, appointed for the purpose, who would, after investigation, affirm or negative the charge, and that the accused should have opportunity of defense before this committee.

This committee had three duties to perform:

FIRST. To examine the case.

SECOND. To report at the next regular meeting the result of its examination, and

THIRD. Either to sustain or disaffirm the charges made.

As it was required to examine into the case, and sustain or fail to sustain the charges made, it necessarily follows that it could make no fair examination or investigation, and report no findings of affirmance or disaffirmance of the charges, unless the person accused was allowed an opportunity of defense, and a chance to meet and refute the charges against him.

It is inconceivable that the words, "Provided the accused shall have an opportunity for defense before final action is taken on his case," could refer to anything else than the investigation by the committee. It is especially provided in the by-law that such investigation shall be by a committee, who shall report whether the charges are sustained or not. It only remained for the society, as a society, to adopt or reject the report, and if the charges were sustained to inflict the penalty.

As the Court below, in its opinion, said:

> "On the second point, whether he was accorded the trial that is provided for in the by-law, I do not interpret this section in the same manner that his learned counsel have. It is rather peculiarly worded, and it is not free from ambiguity, but my interpretation of it is this: That when these

charges have been preferred in proper manner against a member of the society, they shall be referred to a special committee of three, who shall examine into the case and report at the next regular meeting. Now, that was done in this case. 'Whereupon,' the by-law proceeds, 'if the charge has been sustained, the offending member may, by a vote of two-thirds, be reprimanded or expelled.' Now, I do not believe that that includes the rehearing by the whole society, that it is simply, as the language indicates, a report made by the committee to the society, upon which the society acts either affirmatively or negatively—either accepts it or rejects it. * * * But I do not read this as meaning that the association shall rehear the evidence upon which the committee's report was based. They have the right, as any legislative body has, to act upon the report of the committee which has been appointed according to the rules of the order—the society—and they can act with or without information. They can vote blindly, if they please, for it, or they can insist on further information, but it is for them to say whether they will accept or reject the report."

The Investigation of the Committee, Its Findings and Report, and the Action of the Society Thereupon, were in Good Faith and in Accordance with the By-Laws.

In the case of *De Yturbide v. Metropolitan Club,* 11*th D. C. Appeals,* at page 187, in the brief of the learned counsel on the other side of the present case, the following principle of law is laid down:

> "The Courts do not assume to try questions which corporations have the power to regulate by their by-laws, but merely to see that the by-law is valid and the proceedings under it in accordance with the by-laws, and that the party complaining had a fair opportunity to be heard."

As the Court of Appeals sustained this contention, we assume our opponent can have here no doubt as to its being the law. No question is raised by the demurrer as to the validity of the by-law under which Dr. Bryant was expelled. The proceedings had under this by-law were strictly as set forth in the statement of facts. The committee appointed to investigate the charges, while not of Dr. Bryant's choosing, was named in his presence. He objected to two of the members of the original committee named, so two others were appointed, to whom he stated he had no objection. So far then as the committee, itself, is concerned, and its proceedings, there can be no question of bad faith, bias or malice in the appintment of its personnel, or in its proceedings, working to the injury of the appellant. The charges against Dr. Bryant were preferred in writing, in open meeting, and read, *in extenso,* before the society. The charge that he had said, in open meeting, that the members of the society were "too small cattle for him to deal with," and called them, "a lot of cats," referred to an occurrence before the society, with which all were familiar. The other charges were based upon written communications to the Commissioners of the District of Columbia, and to Dr. Chittenden, President of the National Dental Association, and the letters of Dr. Bryant were filed in the original (except as to the communication to the Commissioners, of which a certified copy was filed) with the committee. The specifications of those portions of the letters which were considered to be unprofessional were so clearly and specifically pointed out, that the accused could have no possible ground for ignorance of the exact acts with which he was charged. The charge based upon Dr. Bryant's letter to the Commissioners of the District of Columbia, was founded

upon a sentence, taken almost verbatim from that letter. The charges based upon his letters to Dr. Chittenden, that the letters were false in the number of material statements; vicious in tone; disclosed a mischievous and unnaturally antagonistic evil purpose and contained threats to carry on a contention by Dr. Bryant, discreditable to the dental profession, degrading to the society, and calculated to embarrass, discredit, and defeat worthy objects of the profession, contained ample specifications in which the objectionable language, the false statements, the mischievous purpose, and threats were specifically referred to, and were taken, *verbatim,* from the letters. As will be seen by the record, these specifications show the use by Dr. Bryant to Dr. Chittenden of many expressions, taken *verbatim,* from his letters, which he applied to members of the District of Columbia Dental Society, of which expressions some of the following are examples:

> "I am the last one no earth to stop fighting the filth that has control in this locality."
>
> "I once before told them that 'if it was politics they wanted, I would give them all they wanted, and a damn sight more before I was through with them, and I kept my word."
>
> "I just give you this tip: 'there will be hell to pay' before this thing ends. * * * The black flag is up and I have nailed her to the topmast; 'no quarter will be asked or will be given.' "
>
> "Of all the damn fool moves," etc.
>
> "A lie pure and simple."

Dr. Bryant admitted, both before the committee and before the society, the authorship of the letters to the District Commissioners and to Dr. Chittenden, president of the National Dental Association, upon which the other charges against him were based.

Under the decision of this Court in the De Yturbide case, the appellant could not have complained had the committee, upon such admissions, refused to hear further evidence or grant further opportunity of defense. To use the words of the learned counsel on the other side, contained in his brief in that case, as reported: "The Board of Governors had an undoubted right to act upon the relator's plea of guilty without other evidence."

Instead, however, of the committee assuming this position, upon his admission of these charges, it gave him the fullest and amplest opportunity to be heard, and to explain or justify himself (of which he availed himself to the fullest extent), and, after occupying more than one month in its deliberations, sustained every charge made against him save one.

The committee having reported, sustaining all of the charges made save one, its report was adopted, and, by its adoption, the society placed itself upon record as having, in its corporate capacity, affirmed the findings of its committee.

The *acts* charged against Dr. Bryant were designated as being acts of "unprofessional conduct." The committee found that these *acts* had been committed, not only upon the admission of the defendant, but upon other evidence submitted. It only remained, then, for the society, by its action, to determine whether or not the acts were of such a nature as would justify expulsion.

Ryan *vs.* Cudahy (157 Ill., 108), 49 L. R. A., and notes.

After the adoption of the report of the committee a motion was made, and seconded, that Dr. Bryant be expelled; thereupon, while this motion was pending,

another motion was made that all of the evidence in the case be submitted, which motion was defeated, and, thereupon, ~~after~~ Dr. Bryant ~~had~~ requested fifteen minutes within which to make a statement or defense before the society, and ~~he had been~~ accorded double the time he asked, which time he occupied in personal attacks upon members of the society. As is set forth in the answer (R., p. 15), "Neither by action of the Committee aforesaid, nor by any action taken by the society, or the President thereof, was he prevented from stating any fact or circumstances material to his defence, or which he might have considered material to his defense." Upon the conclusion of his tirade of abuse, the motion for his expulsion was voted upon, and he was expelled by a vote of thirty-nine (39) to fifteen (15).

Dr. Bryant's complaint here is that a motion was made that all the evidence in his case be submitted to the society, which motion was defeated. It will be observed that Dr. Bryant himself did not make this motion. He did not ask personally that the evidence upon which the committee had acted should be submitted to the society. He did not second the motion that it should be submitted to the society. He did not demand, as a matter of right or a matter of grace, that it should be submitted to the society. He was present. If it was his right then to have the evidence submitted, he should have insisted upon it. He did not do so, and, so far as he is concerned, it may well be assumed that he did not want the evidence submitted to the society, or he would have asked for it. It was his duty to himself and to the society to ask for it if he had any objection as to its relevancy or competency or to the good faith of the report of the committee. He made no such request, and uses the fact that the motion for its submission to the

society was defeated as a basis for this proceeding, and he is estopped by his own silence at a time when he should have spoken.

It will be observed that the by-law does not provide the mode in which this committee shall make its examination or take the evidence upon which it shall base its findings. So far as the society is concerned, the answer discloses that the charges against Dr. Bryant were referred to this committee, and that they required the evidence sustaining or defending the same to be put in writing. The contention of the appellant is disposed of when he complains that the society, as a society, refused to hear the evidence, by the mere suggestion, that had the committee determined that the evidence should be presented to it verbally instead of in writing, it would have been impossible to have presented such evidence to the society.

The contention of the appellant also assumes the fact that the members of the society did not know the evidence upon which the committee acted. The presumption of law is that the committee acted in good faith and that the society acted in good faith. In the words of this Court in the Yturbide case:

> "The law will not presume fraud or bad faith in the action of the Board of Governors. In other words, when a party comes into court for relief, it is incumbent upon him to show the existence of facts to justify the interference of the court."

The meetings of the committee were open to all. There was no Star Chamber proceeding. The evidence upon which it acted was before it for a month in tangible, written form, and open to every member who had either the interest or the curiosity to examine it. Nothing was concealed or hidden. To assume that the members did not know the

evidence upon which the findings were reached, is to assume something which is in nowise supported by the facts of the case, as disclosed by the answer.

The District of Columbia Dental Society had the Legal Power to Determine Whether the Acts Charged, and of which the Appellant Was Found Guilty, Were Unprofessional and Sufficiently Grave to Warrant His Expulsion.

The District of Columbia Dental Society was incorporated for the purpose of the advancement of the dental profession and the promotion of social intercourse and kindly feeling among its members.

It therefore became the corporate duty of its members to do nothing derogatory to the advancement of the dental profession or in opposition to the promotion of social intercourse and kindly feeling among its members—meaning the members of the dental society itself.

It would follow that an act of unprofessional conduct would be an act against the duty of the corporator committing it, both as to the advancement of his profession and the promotion of social intercourse and kindly feeling among the members of his society.

That the society itself had a right to pass upon whether or not the act complained of was an act of "unprofessional conduct" and violative of the duty of the corporator, is founded upon the authority of one of the eminent counsel upon the other side of this case, who, in his brief in the Yturbide case, Eleventh D. C. Appeals, 187, uses the following strong and lucid language:

> "The ground of the expulsion of the relator being the violation of a by-law made for the good government of the corporation, and being an act against

> his duty to the corporation, the respondent not only had the legal power to adjudge what constituted conduct unbecoming a gentlemen, but it was the **only** tribunal which could exercise such power."

And, to maintain his position, he quotes several cases, English and American, the references to which are printed in full in the report.

The Court of Appeals sustained the contention therein made by the learned counsel, and in so doing used the following language:

> "Whether the conduct of the relator in accusing the lady, a daughter of a member of the club, within the club, to members thereof, of writing anonymous letters, was such as made it unbecoming a gentleman, within the meaning of the by-law, was a question, as we have seen upon the authorities already cited, that could only be determined by the corporate authorities; and that it is only where it is made clearly to appear that such determination was **ultra vires,** or made contrary to good faith, that the courts can interfere. The courts can not sit as appellate tribunals to review the judgments of the corporate authorities in such cases. The parties concerned, having constituted their own domestic tribunal for the trial and determination of questions of alleged violation of purely corporate duty, they must abide such determination, unless the authority be transcended or there be fraud or bad faith shown." (De Yturbide v. Metropolitan Club, 11 D. C. Appeals, 196, 197.)

This Court doubtless based its opinion upon the authority of our learned brother, and some of the cases cited by him, and others which were within the knowledge of the court. Mr. Justice Gould, in following the views of the

Court of Appeals, as above expressed, said in the case at bar:

> "As I have stated, it is not for this Court to pass upon the sufficiency of the charge against Dr. Bryant—to say that the court acting as the trier of his conduct should have discharged him or not. He entered into this society, and accepted its by-laws and its mode of procedure to be the proper one to be administered in his case, or in any other man's case. I think, substantially, he was accorded a hearing in accordance with the provisions of the by-laws, which were binding upon him as any other member of the society."

The Conduct of Dr. Bryant Was Grossly Violative of His Duty as a Corporator of the District of Columbia Dental Society, and Its Action in Expelling Him Will Not Be Reviewed by the Courts.

It was the contention of counsel for the appellant in the court below, and we assume will be here, that the *acts* charged against Dr. Bryant, and of which he was found guilty, were not "unprofessional in the strict sense of the term." It makes little difference whether the acts charged against him were denominated as being unprofessional, unethical, or ungentlemanly. If they involved a violation of his corporate duty of such gravity as to warrant expulsion, the corporation had the incidental power, outside of its by-law, to expel him.

The doctrine of Lord Mansfield, as announced in King *v.* Richardson, 1 Burr., 517, 524, is declared by Chancellor Kent, in his commentaries, to be the modern law of corporations, and he says:

> "The power of amotion or disfranchisement of a member for a reasonable cause is a power necessarily incident to every corporation."

2 Kent's Com., 297, and this doctrine has been affirmed many times.

As was said by the Court in Manning *v.* San Antonio Club, 63 Texas, 169:

> "The respondent had full legal authority to expel the relator. If considered as a member, by contract, by virtue of the express terms of that contract. If considered as a corporation, then under a valid by-law and an inherent and incidental power in the corporation by virtue of its corporate character."

And, as was said by this Court in the De Yturbide case:

> "There is no longer any question of the right of a corporation, such as the respondent in this case, to make by-laws, even in the absence of express statutory power, and to exercise the power of a motion, as incident to the corporation."

Peculiar, indeed, would be the situation, if a member of a semi-social organization had a right, upon the floor, at a general meeting, to denounce its members in the most flagrantly outrageous and ungentlemanly fashion, and write letters, addressed to public officials and professional brethren, in which their motives were impugned, their integrity attacked, and their conduct villified, and be immune from expulsion. The Court will look to the *acts* with which he is charged, not their definition. It was the wrongful *acts* which constituted the basis of his expulsion. Some of these acts were committed in the presence of the society, and needed no admission; the others were admitted by him. It could make no possible difference as to the propriety and justice of his expulsion how such acts were defined in the charges. He was charged with *acts,* not with definitions of acts.

It is not ordinarily, in such cases as this, the duty of

a court to determine whether the conduct charged was gentlemanly or ungentlemanly, professional or unprofessional. To use the words of Lord Cotton, as reported, in his opinion in the case of Dawkins *v.* Autrobus, 17 Chan. Div., 615:

> "We are not here to sit as a court of appeal from the decision of the committee or of the general meeting. We are not here to say whether we should have arrived at such a conclusion or not, and the question whether the decision was erroneous or not can only be taken into consideration in determining whether that decision is so absurd or evidently wrong as to afford evidence that the action was not *bona fide,* but was malicious or capricious, or proceeded from something other than a fair and an honest exercise of the power given by the rule or by-law."

Consequently it is only where the decision is so **absurd** or **evidently wrong** as to afford evidence of bad faith, malice, caprice, unfairness or dishonesty in the exercise of the power given by the by-law that the Court will say that the record shows the decision to have been unfair, dishonest, and in bad faith.

Under Charge No. 1 Dr. Bryant is accused by four fellow-members of his society with having written a letter to the District Commissioners, under date of March 10, 1904, charging the Board of Dental Examiners, every member of which is a member of this society, with unprofessional and unethical conduct, false to the oath taken by them and to the profession they represent, and insinuates that they issued a circular letter at variance with truth and honesty. He admitted the charge both before the committee and before the society. If to accuse gentlemen with whom he was connected in society

relations with being 'false to the oaths taken by them and the profession they represent, and deficient in truth and honesty' in a communication which is only saved from taking its place in the ranks of criminal libel from the fact that it may **be prima facie** privileged) is **for the purpose of the advancement of the dental profession, or calculated to promote social intercourse and kindly feeling** among the members of the society, it is impossible to imagine **what** would be "unprofessional conduct," or conduct violative of his duty as a corporator.

If interfering with the work of a regular committee on legislation, of his own society, was for the **advancement of the profession,** surely the society had a right to take its own view of it.

If, as in Charge No. 3, at an open meeting of the society, to say that the members of the society were "too small cattle for him to deal with" was not a matter which the society had a right to determine as being, or not being, for the **promotion of social intercourse and kindly feeling** among its members, it is difficult to conceive who else would have a right to pass upon it. It is not unreasonable to suppose that the other gentlemen present did not think it was part of the amenities of life, as expressed in social intercourse, to be denominated as "cattle." To say that they were **"small cattle"** did not help the situation certainly, from their standpoint. To say that they were "too small cattle for him (Dr. Bryant) to deal with" was not an ameliorating circumstance. When, in addition to this charming description of his fellow-members, he "mixes his metaphor," and, though still illustrating from the domain of the animal kingdom, calls them **"a lot of cats,"** the mind wonders that the gentlemen thus referred to did not take this appellant at his own understanding of **social intercourse and kindly**

feeling, and, gently, applying hand and foot, find for him the most convenient, accessible and immediate exit.

To refer to members of his own society as **"the filth that has control in this locality"**; to say that he told these gentlemen that **"if it was politics they wanted, he would give them all they wanted and a damn sight more before he was through with them"**; to characterize some of their actions as **"of all the damn fool moves I ever saw"**; to refer to some of their statements as **"a lie pure and simple,"** appear to us to be matters which, if cognizable at all by gentlemen, are to be settled by them rather than by the courts.

To the above language of the appellant, as picturesque as it is, might be added another gem produced on his facile typewriter, by which he informs the president of the National Association, in regard to some matters then in controversy: **"I just give you this tip: 'there will be hell to pay' before this thing ends. * * * The black flag is up and I have nailed her to the topmast; 'no quarter will be asked or will be given.'"** This expression, also, refers to the piratical warfare he is about to commence upon members of his own society, and needs no comment.

It does seem to us that, where a party of gentlemen have associated themselves together to discuss the advancement of their profession and enjoy that social intercourse and friendly relationship which membership in the same profession and in the same society necessarily develops, they have a right to determine what is the duty of their members to that semi-social organization. When one of them violates decency and transcends all the rules of speech and action that govern the social and professional intercourse of gentlemen, and in his conduct and deportment disregards his every duty to the

feelings and sensibilities of his fellow-members, they should be permitted to determine whether or not they longer desire his company and affiliation.

We think that nothing further need be said in support of the legality and justice of the appellant's expulsion, and that the action of Mr. Justice Gould, in overruling the demurrer to the answer, should be affirmed.

All of which is respectfully submitted.

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